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Attorneys for Plaintiff Owen Diaz

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OWEN DIAZ,

Plaintiff,

v.

TESLA, INC. DBA TESLA MOTORS, INC.,

Defendant.

Case No. 3:17-cv-06748-WHO

**DECLARATION OF CIMONE NUNLEY
IN SUPPORT OF PLAINTIFF'S BRIEF
IN OPPOSITION TO TESLA, INC.'S
MOTIONS *IN LIMINE* NOS. 1-4**

1 I, CIMONE A. NUNLEY, hereby declare:

2 1. I am an attorney licensed to practice law in the State of California. I am an attorney with
3 the law firm of California Civil Rights Law Group, attorneys of record for Plaintiff Owen Diaz
4 in this action. I submit this Declaration in support of Plaintiff's Opposition to Defendant's
5 Motions *in Limine*. I have personal knowledge of the facts stated herein and if called upon to
6 testify, I could and would competently testify thereto, except as to those matters that are stated
7 upon information and belief.

8 2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the deposition of
9 Owen Diaz.

10 3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the deposition of
11 Demetric Di-az.

12 4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the deposition of
13 Lamar Patterson.

14 5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the deposition of
15 Andres Donet.

16 6. Attached hereto as **Exhibit E** is a true and correct copy of Trial Exhibit 109.

17 7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from day one of the
18 first trial in this matter.

19 8. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from day two of the
20 first trial in this matter.

21 9. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from day three of the
22 first trial in this matter.

23 10. Attached hereto as **Exhibit I** is a true and correct copy of excerpts from day four of the
24 first trial in this matter.

25 11. Attached hereto as **Exhibit J** is a true and correct copy of excerpts from day five of the
26 first trial in this matter.

27 12. Attached hereto as **Exhibit K** is a true and correct copy of excerpts from day six of the
28 first trial in this matter.

1 13. Attached hereto as **Exhibit L** is a true and correct copy of Trial Exhibit 138.

2
3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct. Executed on February 10, 2023 in San Anselmo, California.
5

6
7 Dated: February 10, 2023

**CALIFORNIA CIVIL RIGHTS LAW GROUP
ALEXANDER MORRISON + FEHR LLP
ALTSHULER BERZON LLP**

8
9 /s/ Cimone A. Nunley

10 Lawrence A. Organ
11 Cimone A. Nunley
12 J. Bernard Alexander III
13 Michael Rubin
14 Jonathan Rosenthal
15 Attorneys for Plaintiff
16 OWEN DIAZ
17
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Exhibit A

Owen Diaz-Confidential

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REPORTER CERTIFIED
TRANSCRIPT

DEMETRIC DI-AZ, OWEN DIAZ and
LAMAR PATTERSON, an individual,

CONFIDENTIAL

Plaintiffs,

Vs.

Case No. 3:17-cv-06748-WHO

TESLA, INC. DBA TESLA MOTORS,
INC.; CitiStaff SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.
and DOES 1-10, inclusive,

Defendants.
_____ /

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF

OWEN DIAZ

SAN FRANCISCO, CALIFORNIA

TUESDAY, MAY 22, 2018

Reported By:
Candy Newland
CSR No. 14256
File No. 18-25470



1 Deposition of OWEN DIAZ, taken on behalf of Defendants
2 at 351 California Street, Suite 200, San Francisco,
3 California, commencing at 10:11 a.m. on Tuesday, May 15,
4 2018, before Candy Newland, Certified Shorthand Reporter
5 No. 14256.

6
7 A P P E A R A N C E S

8
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21 ALSO PRESENT:

22 Jaime Bodiford, Tesla

23 Rob Delantoni, Videographer

24

25

11:34:14	1	A.	I didn't know their names.
11:34:18	2	Q.	Do you know their names now?
11:34:21	3	A.	No.
11:34:45	4	Q.	How many people were calling you the N-word?
11:34:52	5	A.	Two of the supervisors and a few other
11:35:02	6		employees.
11:35:12	7	Q.	Do you know the names of the supervisors?
11:35:16	8	A.	Yes.
11:35:17	9	Q.	And who are they?
11:35:19	10	A.	Robert -- I don't know his last name -- and
11:35:26	11		Ramon Martinez.
11:35:36	12	Q.	And you said a few other employees. Do you know
11:35:38	13		their names?
11:35:42	14	A.	No.
11:35:45	15	Q.	By "few," how many employees were calling you
11:35:48	16		the N-word?
11:36:06	17	A.	I'm going to to say around -- about 8 to 10.
11:36:19	18	Q.	<u>Okay. How many times did Robert call you the</u>
<u>11:36:29</u>	<u>19</u>		<u>N-word?</u>
<u>11:36:32</u>	<u>20</u>	A.	<u>I can't recall.</u>
<u>11:36:34</u>	<u>21</u>	Q.	<u>Was it less than five?</u>
<u>11:36:44</u>	<u>22</u>	A.	<u>No.</u>
<u>11:36:44</u>	<u>23</u>	Q.	<u>Was it more than five?</u>
<u>11:36:46</u>	<u>24</u>	A.	<u>Yes.</u>
<u>11:36:46</u>	<u>25</u>	Q.	<u>Was it less than 10?</u>

<u>11:36:52</u>	<u>1</u>	<u>A.</u>	<u>No.</u>
<u>11:36:54</u>	<u>2</u>	<u>Q.</u>	<u>Was it less than 15?</u>
<u>11:37:01</u>	<u>3</u>	<u>A.</u>	<u>I can't give you an exact number.</u>
<u>11:37:05</u>	<u>4</u>	<u>Q.</u>	<u>Was it somewhere between 10 and 15?</u>
<u>11:37:09</u>	<u>5</u>	<u>A.</u>	<u>I can't give you an exact number.</u>
<u>11:37:11</u>	<u>6</u>	<u>Q.</u>	<u>Okay. I don't need an exact number. I just</u>
<u>11:37:14</u>	<u>7</u>		<u>need an estimate to the best of your recollection.</u>
<u>11:37:31</u>	<u>8</u>	<u>A.</u>	<u>I'd say other 30 times.</u>
11:37:41	9	Q.	And how many times did Ramon Martinez call you
11:37:44	10		the N-word?
11:37:45	11	A.	More than 30 times.
11:37:55	12	Q.	Is there anything you can describe to me about
11:37:58	13		the 8 to 10 employees that called you that -- called you
11:38:01	14		the N-word?
11:38:08	15	A.	They were just working on the production floor,
11:38:12	16		the battery line.
11:38:16	17	Q.	All 8 to 10 were working on the battery line?
11:38:20	18	A.	Either production or the battery line.
11:38:40	19	Q.	Were any of them in recycling?
11:38:45	20	A.	Possible.
<u>11:39:01</u>	<u>21</u>	<u>Q.</u>	<u>What race is Robert?</u>
<u>11:39:04</u>	<u>22</u>	<u>A.</u>	<u>Hispanic.</u>
11:39:07	23	Q.	And what about Ramon?
11:39:09	24	A.	Hispanic also.
11:39:12	25	Q.	And what about the 8 to 10 employees?

<u>11:41:40</u>	<u>1</u>	<u>Q. Can you remember the first time that Robert</u>
<u>11:41:43</u>	<u>2</u>	<u>called you the N-word?</u>
<u>11:41:50</u>	<u>3</u>	<u>A. We were in the elevator.</u>
<u>11:41:55</u>	<u>4</u>	<u>Q. And what did she say?</u>
<u>11:41:59</u>	<u>5</u>	<u>A. "N, hurry up and push the button."</u>
<u>11:42:19</u>	<u>6</u>	<u>Q. And what did you say?</u>
<u>11:42:23</u>	<u>7</u>	<u>A. Nothing.</u>
<u>11:42:33</u>	<u>8</u>	<u>Q. And did you report that to Mr. Romero?</u>
<u>11:42:37</u>	<u>9</u>	<u>A. No.</u>
<u>11:42:45</u>	<u>10</u>	<u>Q. Why not?</u>
<u>11:42:51</u>	<u>11</u>	<u>A. I wanted to keep -- I didn't want to rock the</u>
<u>11:42:55</u>	<u>12</u>	<u>boat. I wanted to keep working.</u>
<u>11:42:58</u>	<u>13</u>	<u>Q. Do you remember the second time that Robert used</u>
<u>11:43:09</u>	<u>14</u>	<u>the N-word?</u>
<u>11:43:12</u>	<u>15</u>	<u>A. I can't recall.</u>
<u>11:43:28</u>	<u>16</u>	<u>Q. Was it in the elevator?</u>
<u>11:43:34</u>	<u>17</u>	<u>A. I can't recall.</u>
<u>11:43:39</u>	<u>18</u>	<u>Q. Do you remember what was said exactly?</u>
<u>11:43:46</u>	<u>19</u>	<u>A. I can't recall exactly what was said, but I -- I</u>
<u>11:44:19</u>	<u>20</u>	<u>can't recall.</u>
<u>11:44:19</u>	<u>21</u>	<u>Q. Do you remember generally what was said?</u>
<u>11:44:28</u>	<u>22</u>	<u>A. I can't generally, no.</u>
<u>11:44:35</u>	<u>23</u>	<u>Q. Do you remember what was said on any of the</u>
<u>11:44:40</u>	<u>24</u>	<u>other occasions that Robert called you the N-word?</u>
<u>11:44:49</u>	<u>25</u>	<u>A. Some of them. Yes.</u>

04:42:00 1 that you know of?

04:42:02 2 A. Possibility.

04:42:07 3 Q. Do you know whether he did or not?

04:42:08 4 A. I don't know.

04:42:11 5 Q. Did Robert ever tell you that he was going to
04:42:15 6 complain to his boss about you?

04:42:23 7 A. I believe so. Yes.

04:42:25 8 Q. And didn't you respond by calling him a snake?

04:42:31 9 A. I don't recall.

04:42:32 10 Q. Did Robert tell you what he was going to
04:42:39 11 complain to his boss about?

04:42:42 12 A. No.

04:42:45 13 Q. When did Robert tell you he was going to
04:42:48 14 complain to his boss about you?

04:42:50 15 A. I don't recall.

04:43:24 16 (EXHIBIT 20 was marked for identification.)

04:43:24 17 BY MS. ANTONUCCI:

04:43:28 18 Q. Exhibit 20 is a series of e-mails, Bates-stamped
04:43:34 19 at the bottom Tesla 314 to 316. And at the bottom of
04:43:55 20 page 315, there's an e-mail from Joyce Dela Grande to
04:44:02 21 Ed Romero that says, "So I'm having a few more issues
04:44:07 22 with Owen. Tonight my lead approached him to talk to
04:44:12 23 him, and he said for my associates to only talk to him
04:44:15 24 if it is related to business because there are so many
04:44:19 25 snakes here at Tesla."

<u>04:44:21</u>	<u>1</u>	<u>Did you ever say that?</u>
<u>04:44:24</u>	<u>2</u>	<u>A. No.</u>
<u>04:44:26</u>	<u>3</u>	<u>Q. You never said, "There is so many snakes here at</u>
<u>04:44:30</u>	<u>4</u>	<u>Tesla"?</u>
<u>04:44:31</u>	<u>5</u>	<u>A. No.</u>
<u>04:44:32</u>	<u>6</u>	<u>Q. Did you ever tell anyone at Tesla to only talk</u>
<u>04:44:42</u>	<u>7</u>	<u>to you if it was related to business?</u>
<u>04:44:45</u>	<u>8</u>	<u>A. Yes.</u>
<u>04:44:46</u>	<u>9</u>	<u>Q. Who did you say that to?</u>
<u>04:44:51</u>	<u>10</u>	<u>A. Robert.</u>
<u>04:45:08</u>	<u>11</u>	<u>Q. It says, "I guess he was having a personal</u>
<u>04:45:11</u>	<u>12</u>	<u>conversation on the elevator with someone and thought</u>
<u>04:45:14</u>	<u>13</u>	<u>Robert saying hi to him was rude."</u>
<u>04:45:17</u>	<u>14</u>	<u>Were you -- did you ever feel that Robert saying</u>
<u>04:45:20</u>	<u>15</u>	<u>hi to you was rude?</u>
<u>04:45:22</u>	<u>16</u>	<u>MR. ORGAN: Objection. Vague and ambiguous.</u>
<u>04:45:25</u>	<u>17</u>	<u>THE WITNESS: I felt -- I was tired of Robert</u>
<u>04:45:30</u>	<u>18</u>	<u>calling me "niggers" and "boy."</u>
<u>04:45:30</u>	<u>19</u>	<u>BY MS. ANTONUCCI:</u>
<u>04:45:36</u>	<u>20</u>	<u>Q. "His response to my lead was he does not want</u>
<u>04:45:39</u>	<u>21</u>	<u>anyone talking to him."</u>
<u>04:45:40</u>	<u>22</u>	<u>Did you ever tell anybody that you didn't want</u>
<u>04:45:43</u>	<u>23</u>	<u>anyone talking to him -- talking to you?</u>
<u>04:45:47</u>	<u>24</u>	<u>A. Yes. Robert.</u>
<u>04:45:48</u>	<u>25</u>	<u>Q. And did you tell Robert that if he want -- if he</u>

1 I, CANDY NEWLAND, CSR No. 14256, certify that the
2 foregoing proceedings were taken before me at the time
3 and place herein set forth, at which time the witness
4 was duly sworn, and that the transcript is a true record
5 of the testimony so given.

6
7 Witness review, correction, and signature was

8 (X) by Code.

(X) requested.

9 () waived.

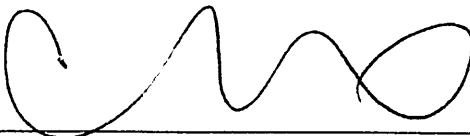
() not requested.

10 () not handled by the deposition officer due to party
11 stipulation.

12
13 The dismantling, unsealing, or unbinding of the
14 original transcript will render the reporter's
15 certificate null and void.

16 I further certify that I am not financially
17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties nor of any of
19 the parties.

20 Dated this 29TH day of May, 2018.

21
22
23
24 

25 CANDY NEWLAND, CSR 14256

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REPORTER CERTIFIED
TRANSCRIPT

DEMETRIC DI-AZ, OWEN DIAZ and
LAMAR PATTERSON, an individual,

Plaintiffs,

CONFIDENTIAL

vs.

No. 3:17-cv-06748-WHO
VOL II, pgs 187 - 292

TESLA, INC. DBA TESLA MOTORS,
INC.; CITISTAFF SOLUTIONS,
INC.; WEST VALLEY STAFFING
GROUP; CHARTWELL STAFFING
SERVICES, INC. and DOES 1-10,
inclusive,

Defendants.

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF

OWEN DIAZ

SAN FRANCISCO, CALIFORNIA

MONDAY, DECEMBER 3, 2018

Reported by:

GINA V. CARBONE, CSR #8249
RPR, RMR, CRR, CCRR
FILE NO.: 18-27207



1 Deposition of OWEN DIAZ, Volume II, taken
2 on behalf of Defendants at CONSTANGY, BROOKS, SMITH
3 & PROPHETE LLP, 351 California Street, Suite 200,
4 San Francisco, California 94104, commencing at
5 10:29 a.m. on Monday, December 3, 2018, before
6 Gina V. Carbone, Certified Shorthand Reporter
7 No. 8249, RPR, RMR, CRR, CCRR.

8

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11 ALSO PRESENT: Teresa Kossayian,
12 West Valley Staffing Group

13

Frank Quirarte, videographer

14

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11:51:29 1 A. So he didn't witness the whole incident in
11:51:35 2 whole. He just witnessed partial.

11:51:38 3 Q. Okay. So can you describe the incident to
11:51:42 4 the best of your recollection that occurred in the
11:51:46 5 elevator with Robert in or around February of 2016.

11:51:58 6 A. Earlier -- well, can you repeat that
11:52:01 7 question, first of all?

11:52:02 8 Q. Yeah. Can you describe the incident with
11:52:05 9 Robert in or around February of 2016.

11:52:17 10 A. Particular day I believe this was sent, I
11:52:25 11 had had a negative interaction with Robert earlier
11:52:29 12 in my shift being called the N-word and a boy.

11:52:38 13 I was pretty upset about it, so I was over
11:52:45 14 in the -- I had went to another elevator. Robert, I
11:52:51 15 believe, showed up to this elevator over here, and
11:52:54 16 me and Lamar Patterson was having a conversation.
11:53:02 17 Robert said something. I can't 100 percent recall
11:53:06 18 what he said.

11:53:09 19 But at that point I had turned to Robert
11:53:12 20 and I had relayed to Robert that I wasn't going to
11:53:19 21 go -- basically go back and forth with him. If it
11:53:21 22 didn't have anything to do that was job related
11:53:26 23 about doing the job, I preferred not to talk to him
11:53:30 24 on a personal level. Robert got mad.

11:53:41 25 That was it.

1 I, GINA V. CARBONE, CSR No. 8249, RPR, RMR, CRR,
2 CCRR, certify: that the foregoing proceedings were taken
3 before me at the time and place herein set forth; at
4 which time the witness was duly sworn; and that the
5 transcript is a true record of the testimony so given.
6

7 Witness review, correction and signature was
8 (X) by code. (X) requested.
9 () waived. () not requested.
10 () not handled by the deposition officer due to party
11 stipulation.
12

13 The dismantling or unbinding of the original
14 transcript will render the reporter's certificate null
15 and void.

16 I further certify that I am not financially
17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties, nor of any of
19 the parties.

20 Dated this 7th day of December , 2018 .
21

22 
23 _____
24 GINA V. CARBONE
25 CSR #8249, STATE OF CALIFORNIA

OWEN ORAPIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.

June 21, 2019
293

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3
4 DEMETRIC DIAZ, OWEN DIAZ,) Case No. 3:17-CV-06748-WHO
and LAMAR PATTERSON,)

5)
6 Plaintiffs,)

7 vs.)

8 TESLA, INC. dba TESLA)

9 MOTORS, INC.; CITISTAFF)

10 SOLUTIONS, INC.; WEST)

11 VALLEY STAFFING GROUP;)

12 CHARTWELL STAFFING)

13 SERVICES, INC.;)

14 NEXTSOURCE, INC.;)

15 DOES 1-50, inclusive,)

16 Defendants.)
17
18
19
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21
22
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24
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Volume III

DEPOSITION OF OWEN ORAPIO DIAZ, JR.

PAGES 293 THROUGH 441

SAN FRANCISCO, CALIFORNIA

JUNE 21, 2019

REPORTED BY: MICHAEL CUNDY, CSR 12271

OWEN ORAPIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.

June 21, 2019

294

DEPOSITION OF OWEN ORAPIO DIAZ, JR., taken
at One Embarcadero Center, Suite 2050, San Francisco,
California, on Friday, June 21, 2019, at 9:33 A.M.,
before Michael Cundy, Certified Shorthand Reporter, in
and for the State of California.

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13 ALSO PRESENT:

14 KEVEN McMAHON
15 VIDEOGRAPHER
16
17
18
19
20
21
22
23
24
25

OWEN ORAPIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.June 21, 2019
308

1 people that you took instruction from was Robert. 09:43:30

2 Is this the same Robert you are mentioning 09:43:34

3 now? 09:43:36

4 A Yes, sir. 09:43:38

5 Q Okay. Last time your deposition was taken, 09:43:39

6 you couldn't recall Robert's last name. 09:43:41

7 Do you know it now? 09:43:43

8 A No, sir. 09:43:46

9 Q Do you know who employed Robert? 09:43:50

10 A Tesla. 09:43:55

11 Q Do you know what Robert's position was? 09:43:57

12 A I believe it was a lead. 09:44:02

13 Q And what department did he work? 09:44:06

14 A Conveyance. 09:44:12

15 Q And you testified previously that Robert, I 09:44:20

16 believe, also called you the N-word. 09:44:25

17 Is this the same Robert? 09:44:28

18 A Yes, sir. 09:44:30

19 Q Okay. And you understand when I'm referring 09:44:30

20 to the N-word? 09:44:32

21 A Yes, sir. 09:44:33

22 Q Okay. How did you come to the conclusion 09:44:39

23 that Robert was employed by Tesla? 09:44:42

24 A The role that he provided for the company, 09:44:52

25 the fact that he mentioned it a few times and never 09:44:58

OWEN ORAPIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.June 21, 2019
438

1 STATE OF CALIFORNIA)
2) SS:
3 CITY AND COUNTY OF SAN FRANCISCO)
4

5 I, Michael Cundy, CSR NO. 12271, a
6 Certified Shorthand Reporter of the State of
7 California, do hereby certify:

8 That the foregoing proceedings were
9 taken before me at the time and place herein set
10 forth; that any witnesses in the foregoing
11 proceedings, prior to testifying, were placed under
12 oath; that a verbatim record of the proceedings was
13 made by me using machine shorthand which was
14 thereafter transcribed under my direction; further,
15 that the foregoing is an accurate transcription
16 thereof.

17 I further certify that I am neither
18 financially interested in the action nor a relative or
19 employee of any attorney or any of the parties.

20 IN WITNESS WHEREOF, I have this date
21 subscribed my name.

22 Dated: July 3, 2019



24 Michael Cundy, CSR NO. 12271
25

Exhibit B

Demetric Di-Az-Confidential

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REPORTER CERTIFIED
TRANSCRIPT

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON, an individual,

CONFIDENTIAL

Plaintiffs,

vs.

Case No. 3:17-cv-06748-WHO

TESLA, INC. DBA TESLA MOTORS,
INC.; CITISTAFF SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.
and DOES 1-10, inclusive,

Defendants.
_____ /

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF

DEMETRIC DI-AZ

SAN FRANCISCO, CALIFORNIA

TUESDAY, MAY 15, 2018

Reported By:
Candy Newland
CSR No. 14256
File No. 18-25468



~~Demetric Di-Az-Confidential~~

1 Deposition of DEMETRIC DI-AZ, taken on behalf of
2 Defendants at 351 California Street, Suite 200, San
3 Francisco, California, commencing at 10:11 a.m. on
4 Tuesday, May 15, 2018, before Candy Newland, Certified
5 Shorthand Reporter No. 14256.

6
7 A P P E A R A N C E S

8
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20

21 ALSO PRESENT:

22 Teresa Kossayian, West Valley Staffing Group

23 Jaime Bodiford, Tesla

24 Frank Quirarte, Videographer

25

03:32:15 1 A. We were getting ready to go on our meal break.
03:32:19 2 We were running a little behind. He was, like, "All you
03:32:23 3 niggers need to hurry the fuck up."
03:32:34 4 Q. Did you say anything back to him at the point?
03:32:37 5 A. No. The first time it ever happened I was kind
03:32:42 6 of stuck, like, "What?" I really didn't know what to
03:32:45 7 do.
03:32:45 8 Q. Was anyone else there?
03:32:48 9 A. My team.
03:33:02 10 MS. ANTONUCCI: Let's mark this as the next
03:33:03 11 exhibit.
03:33:14 12 (EXHIBIT 34 was marked for identification.)
03:33:14 13 BY MS. ANTONUCCI:
03:33:19 14 Q. Exhibit 34 is a list of the individuals who were
03:33:22 15 working and photographs of the individuals who were
03:33:28 16 working at Tesla at the time you were there.
03:33:33 17 MR. ORGAN: Why wasn't this turned over?
03:33:35 18 There's no basis.
03:33:36 19 MS. ANTONUCCI: It wasn't requested. It's also
03:33:42 20 not necessarily anything we would use to support if he
03:33:47 21 actually knew the names of the people that we were
03:33:50 22 talking about.
03:33:51 23 MR. ORGAN: I see.
03:33:51 24 BY MS. ANTONUCCI:
03:33:53 25 Q. Can you tell me, you know, having looked through

03:33:55 1 these pictures who were the individuals on your team?

03:35:08 2 A. Do you want my honest opinion about this paper?

03:35:10 3 Q. I only want you to be truthful in this

03:35:13 4 deposition.

03:35:13 5 A. It really looked like you all just added my

03:35:17 6 picture to this, and I really -- 'cause I'm the only one

03:35:18 7 in here that says battery. There's nobody else that

03:35:23 8 says battery at all.

03:35:23 9 Q. Okay. But that's not my question.

03:35:26 10 A. You asked me did I know anybody that worked on

03:35:29 11 my team.

03:35:30 12 Q. Correct.

03:35:31 13 A. It's only me that says battery.

03:35:31 14 Q. So none of these --

03:35:34 15 A. There's nobody else on this paperwork that has

03:35:36 16 anything to do with battery.

03:35:37 17 Q. So none of these individuals worked on your

03:35:44 18 team?

03:35:44 19 MR. ORGAN: Objection. Misstates his

03:35:45 20 evidence -- his testimony.

03:35:45 21 BY MS. ANTONUCCI:

03:35:46 22 Q. So, for example, let me turn your attention to

03:35:53 23 Green, Trinidad. These are all in alphabetical order;

03:35:53 24 so you can just go to the G.

03:35:59 25 A. I see it now.

03:36:00	1	Q.	<u>Okay.</u>
03:36:00	2	A.	<u>He worked on the shift floor in the morning.</u>
03:36:04	3	Q.	<u>So that individual was not on your team?</u>
03:36:07	4	A.	<u>No.</u>
03:36:07	5	Q.	<u>Okay.</u>
03:36:13	6	A.	<u>Shift floor, shift 1.</u>
03:36:52	7	Q.	<u>None of the individuals that you've seen so far</u>
03:36:57	8		<u>are on your team -- or worked on your team?</u>
03:36:59	9		<u>MR. ORGAN: Well, you need to look at the faces</u>
03:37:01	10		<u>too. I know you're looking for battery but this is an</u>
03:37:06	11		<u>extremely lengthy document that has a lot of pictures on</u>
03:37:09	12		<u>it. So see if you can --</u>
03:37:09	13		<u>THE WITNESS: I remember working with him when I</u>
03:37:12	14		<u>was working the day shift.</u>
03:37:12	15		<u>BY MS. ANTONUCCI:</u>
03:37:12	16	Q.	<u>Who's that?</u>
03:37:12	17	A.	<u>Trinidad Green.</u>
03:37:25	18	Q.	<u>When you worked on the night shift, do you</u>
03:37:29	19		<u>see --</u>
03:37:29	20	A.	<u>No, when I worked on the day shift.</u>
03:37:31	21	Q.	<u>I heard you, but when you worked on the night</u>
03:37:31	22		<u>shift, did you work with any of these individuals?</u>
03:37:33	23	A.	<u>No.</u>
03:37:33	24		<u>MR. ORGAN: Objection. Compound. Vague and</u>
03:37:45	25		<u>ambiguous.</u>

~~Demetric Di-Az-Confidential~~

<u>03:37:45</u>	<u>1</u>	<u>BY MS. ANTONUCCI:</u>
<u>03:37:46</u>	<u>2</u>	<u>Q. Can you turn your attention to Joshua Buck? Do</u>
<u>03:37:50</u>	<u>3</u>	<u>you see that?</u>
<u>03:37:53</u>	<u>4</u>	<u>Again, if you keep them in order, they're in</u>
<u>03:37:56</u>	<u>5</u>	<u>alphabetical order so things are easier to find.</u>
<u>03:37:59</u>	<u>6</u>	<u>Otherwise, I can number them for you.</u>
<u>03:38:11</u>	<u>7</u>	<u>A. These are the H's.</u>
<u>03:38:17</u>	<u>8</u>	<u>MR HORTON: Was that Plot with a P?</u>
<u>03:38:21</u>	<u>9</u>	<u>THE WITNESS: Buck.</u>
<u>03:38:23</u>	<u>10</u>	<u>MS. ANTONUCCI: Buck.</u>
<u>03:38:24</u>	<u>11</u>	<u>MR. ORGAN: Buck with a B.</u>
<u>03:38:24</u>	<u>12</u>	<u>MR. HORTON: B. Okay.</u>
<u>03:38:40</u>	<u>13</u>	<u>MR. ORGAN: Here's his picture right here. That</u>
<u>03:38:45</u>	<u>14</u>	<u>guy?</u>
<u>03:38:45</u>	<u>15</u>	<u>THE WITNESS: Uh-huh.</u>
<u>03:38:46</u>	<u>16</u>	<u>MR. ORGAN: Does that look familiar?</u>
<u>03:38:48</u>	<u>17</u>	<u>THE WITNESS: Yeah. I think I do remember him.</u>
<u>03:38:48</u>	<u>18</u>	<u>BY MS. ANTONUCCI:</u>
<u>03:38:51</u>	<u>19</u>	<u>Q. Was that your shift lead when you worked the</u>
<u>03:38:54</u>	<u>20</u>	<u>night shift?</u>
<u>03:38:54</u>	<u>21</u>	<u>A. Yes.</u>
<u>03:38:59</u>	<u>22</u>	<u>MR. HORTON: Was that answer "yes"?</u>
<u>03:39:01</u>	<u>23</u>	<u>MS. ANTONUCCI: Yes.</u>
<u>03:39:32</u>	<u>24</u>	<u>MR. ORGAN: Let the record reflect that that was</u>
<u>03:39:36</u>	<u>25</u>	<u>the third page in the exhibit since the exhibit pages</u>

03:39:40 1 are not numbered.

03:39:42 2 MS. ANTONUCCI: Let's take a quick break,
03:39:45 3 please.

03:39:46 4 THE VIDEOGRAPHER: We're going off the record.
03:39:48 5 The time is 3:39 p.m.

03:43:41 6 (Off the record: 3:39 p.m. to 3:43 p.m.)

03:43:41 7 THE VIDEOGRAPHER: We're back on the record.
03:43:49 8 The time is 3:43 p.m.

03:43:49 9 BY MS. ANTONUCCI:

03:43:52 10 Q. Have you had an opportunity to look through
03:43:55 11 Exhibit 34?

03:43:55 12 A. Yes.

03:43:58 13 Q. Are any of the individuals whose photographs are
03:44:02 14 in Exhibit 34 on your team when you worked the night
03:44:06 15 shift at Tesla?

03:44:07 16 MR. ORGAN: Objection. Compound.

03:44:09 17 THE WITNESS: Can you restate the question,
03:44:11 18 please?

03:44:11 19 BY MS. ANTONUCCI:

03:44:12 20 Q. Are any of the individuals on Exhibit 34 on your
03:44:15 21 team when you worked the night shift at Tesla?

03:44:19 22 A. The only person I remember is Joshua Buck.

03:44:47 23 Q. On page 6, is that you, Demetric Di-az? Is that
03:44:57 24 a picture of you?

03:44:58 25 A. Yes.

1 I, CANDY NEWLAND, CSR No. 14256, certify that the
2 foregoing proceedings were taken before me at the time
3 and place herein set forth, at which time the witness
4 was duly sworn, and that the transcript is a true record
5 of the testimony so given.

6
7 Witness review, correction, and signature was

8 (X) by Code. (X) requested.

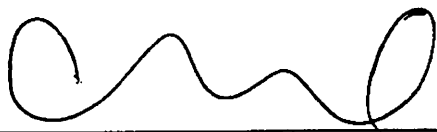
9 () waived. () not requested.

10 () not handled by the deposition officer due to party
11 stipulation.

12
13 The dismantling, unsealing, or unbinding of the
14 original transcript will render the reporter's
15 certificate null and void.

16 I further certify that I am not financially
17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties nor of any of
19 the parties.

20 Dated this 29th day of May, 2018.

21
22
23
24 

25 CANDY NEWLAND, CSR 14256

Exhibit C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REPORTER CERTIFIED
TRANSCRIPT

DEMETRIC DI-AZ, OWEN DIAZ
and LAMAR PATTERSON, an
individual,

No. 3:17-cv-06748-WHO

Plaintiffs,

CONFIDENTIAL

vs.

TESLA, INC. DBA TESLA
MOTORS, INC.; CITISTAFF
SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING
SERVICES, INC., and DOES
1-10, inclusive,

Defendants.

CONFIDENTIAL

Deposition of

LAMAR PATTERSON

San Francisco, California

Friday, July 26, 2019

REPORTED BY:
Sarah Jean Seitz
CSR No. 14175, RPR
FILE No: 19-29151



1 Deposition of LAMAR PATTERSON, taken on behalf
2 of Defendants at Four Embarcadero Center, 17th Floor,
3 San Francisco, California 94111, commencing at 10:12
4 a.m. on Friday, July 26, 2019, before Sarah Seitz,
5 Certified Shorthand Reporter No. 14175, RPR.

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Lamar Patterson-Confidential

APPEARANCES (CONTINUED)

ALSO PRESENT:

Jamie Bodiford - Tesla

---oOo---

1 Q. Okay. So you actually only saw them interact
2 once?

3 A. Yeah.

4 Q. Okay. What did you see --

5 MS. AVLONI: I'm sorry. I'm going to
6 interlineate an objection as to vague and ambiguous as
7 to "interact."

8 BY MS. JENG:

9 Q. What was your observation of that one time you
10 saw Owen and Robert interact in the elevator?

11 A. What was the details of it?

12 Q. Yes.

13 A. Him and Robert got into, like, a heated
14 argument, and he exchanged words.

15 Q. You mean Robert exchanged words?

16 A. Yeah.

17 Q. Do you remember what date that was?

18 A. No.

19 Q. Do you remember approximately what date?

20 A. No.

21 Q. Was it towards the beginning of your employment
22 or towards the end or middle?

23 A. It could have been the middle.

24 Q. Okay. So tell me what happened. Were you and
25 Owen in the elevator together?

1 A. Yes.

2 Q. Okay. And then -- then what happened? How did
3 Robert start exchanging words?

4 A. He was talking to him loud and kind of said
5 some things he shouldn't have said to him.

6 Q. How did the argument start?

7 A. I'm not sure exactly how it started.

8 Q. Were you there the whole time, or did Robert
9 come into the conversation later?

10 A. He was in the elevator with us.

11 Q. Okay. So the three of you were in the elevator
12 together when it started?

13 A. Right.

14 Q. Okay. But you don't remember how it started?

15 A. I don't remember how it started.

16 Q. Okay. Tell me what you do remember about the
17 argument.

18 A. Just him pretty much being angry at Owen, I
19 guess, and just them exchanging words.

20 Q. Do you remember what Robert was angry at Owen
21 about?

22 A. I'm not sure.

23 Q. Did he say what he was angry at Owen about?

24 A. I don't recall.

25 Q. Okay. And what were the words that were

1 exchanged?

2 A. I believe he -- he called him the N-word. I
3 heard it. But I'm not sure what nature the conversation
4 that made him so heated about.

5 Q. What did Owen say to Robert?

6 A. He didn't say much. He didn't say much to him.

7 Q. So you don't remember what the argument was
8 about at all?

9 A. I'm not sure what the argument was about.

10 Q. Okay. And what were you doing while they were
11 in this argument?

12 A. Just observing and trying to figure out what is
13 going on.

14 Q. Did you say anything?

15 A. No.

16 Q. Were you there for the whole exchange?

17 A. I don't know when it started, so I can't say.

18 Q. Okay. And what else do you remember about what
19 Robert said?

20 A. I just remember them exchanging words, and Owen
21 was just telling him that if, you know, he couldn't talk
22 to him respectfully, then he wouldn't talk to him at
23 all.

24 Q. Well, what else do you remember about the
25 specific words that were exchanged?

CERTIFICATE OF REPORTER

I, SARAH J. SEITZ, CSR No. 14175, RPR, certify:
That the foregoing proceedings were taken before me at
the time and place herein set forth; at which time the
witness was duly sworn; and that the transcript is a
true record of the testimony so given.

Witness review, correction, and signature was
(X) By code. (X) Requested.
() Waived. () Not requested.
() Not handled by the deposition officer due to party
stipulation.

The dismantling, unsealing, or unbinding of the
original transcript will render the reporter's
certificate null and void.

I further certify that I am not financially
interested in the action, and I am not a relative or
employee of any attorney of the parties, nor of any of
the parties.

Dated this 6th day of August, 2019.



SARAH J. SEITZ, CSR No. 14175, RPR

Exhibit D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DIAZ, et al.,)	
)	
Plaintiffs,)	
)	Case No.
v.)	3:17-cv-06748-WHO
)	
TESLA, INC., et al.,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF ANDRES DONET

DATE: Thursday, October 24, 2019

TIME: 4:39 p.m.

LOCATION: Sheppard, Mullin, Richter &
Hampton LLP
379 Lytton Avenue
Palo Alto, California 94301

REPORTED BY: Peter Torreano, CSR, CRR
Certified Shorthand Reporter
License Number C-7623

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(415) 490-9000

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:07:14 1 was really bad, I guess.

17:07:17 2 BY MR. ORGAN:

17:07:17 3 Q. Well, you did see at least one bad picture;
17:07:21 4 right?

17:07:21 5 A. People write things there, you know. I came
17:07:27 6 as a supervisor. As an example I don't remember that
17:07:30 7 happening, you know, but sometimes. But it's not very
17:07:38 8 often in that area, not very often.

17:07:39 9 Q. But in terms of seeing things written in the
17:07:42 10 bathrooms during your inspections of the areas around
17:07:45 11 the elevators, you did occasionally see graffiti
17:07:51 12 written in those elevators; correct -- I mean in those
17:07:54 13 bathrooms; correct?

17:07:55 14 MR. HASAN: Same objection. Outside the
17:07:58 15 area of the scope of the testimony.

17:08:01 16 THE DEPONENT: I did see eventually once in a
17:08:05 17 while, not very often some inscriptions or drawings on
17:08:09 18 the wall -- on the partitions mostly, the stalls.

17:08:14 19 BY MR. ORGAN:

17:08:14 20 Q. And when you say the partitions -- oh, the
17:08:17 21 partitions.

17:08:17 22 A. The toilet partition, yeah.

17:08:19 23 Q. So when you saw graffiti it was typically on
17:08:23 24 the partitions for the bathroom stalls; is that
17:08:28 25 correct?

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:08:28 1 A. Yeah. Inside the bathrooms mostly.

17:08:32 2 Q. And when you saw those pictures or words did
17:08:36 3 any of those words include the word "nigger,"

17:08:42 4 N-I-G-G-E-R? Do you remember that?

17:08:45 5 A. That word? I know the word, but I haven't
17:08:49 6 seen graffiti including that word.

17:08:51 7 Q. Never?

17:08:51 8 A. Never as far as I can remember. I'm not sure
17:08:57 9 100 percent, but I don't recall it.

17:09:00 10 Q. But what about the word "nigga," N-I-G-G-A;
17:09:04 11 did you ever see that written in the bathroom stalls?

17:09:07 12 A. I don't recall it.

17:09:08 13 Q. Did you ever see a swastika written in the
17:09:15 14 bathroom stalls?

17:09:17 15 A. Not I can recall of, no.

17:09:21 16 Q. Okay. But you did at some point get a picture
17:09:24 17 of such information; correct?

17:09:26 18 A. We did receive some -- so the reports we
17:09:33 19 receive in that period of time, some of them I remember
17:09:39 20 included pictures and some not.

17:09:42 21 Q. So you received written reports from time to
17:09:45 22 time?

17:09:46 23 A. They were e-mails. "By the way, I was just in
17:09:51 24 the bathroom and we found graffiti." That's pretty
17:09:53 25 much what we received. So a janitorial company goes

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:10:00 1 over and clean that thing out, off. So that's the
17:10:05 2 whole thing.

17:10:05 3 Q. I'm going to show you what's been marked as
17:10:08 4 Exhibit 193. For the record Exhibit 193 is a
17:10:13 5 three-page document Bates-stamped Tesla 1003 to 1005.

17:10:23 6 Look it over and then I'll ask you some
17:10:25 7 questions. 1005.

17:10:50 8 A. I don't remember this even though I sent an
17:10:53 9 e-mail reporting it was clean. Yeah, that's me. But I
17:10:59 10 don't -- are you sure these were together?

17:11:03 11 Q. Yes. I'm positive because that's how they
17:11:05 12 were produced to us. And if you look at the second
17:11:08 13 page of it, the complaint from Mr. Colvin, Kevin
17:11:13 14 Colvin, you see that second page? It says, "This is
17:11:15 15 the bathroom located by the elevator while walking
17:11:19 16 upstairs. The writing says 'All niggers must die.'"

17:11:22 17 So that's the e-mail that was sent to three
17:11:25 18 people, Roel Kliatchko, Jonathan Baldoza and Rob Lewis.
17:11:33 19 Do you know who those people are?

17:11:34 20 A. No. I don't remember them.

17:11:36 21 Q. Okay. But at some point Roel --

17:11:39 22 A. Kliatchko.

17:11:40 23 Q. -- Kliatchko sent an e-mail back and then
17:11:44 24 you -- you somehow get it?

17:11:50 25 A. Yeah. Because I belong to the building

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:11:54 1 services areas.

17:11:55 2 Q. I see.

17:11:56 3 A. Yeah. So that's why I -- I -- I answer.

17:12:02 4 Later I received a report back from the janitorial
17:12:06 5 company letting me know that the thing was cleaned.

17:12:10 6 But I don't recall this -- this picture, this graffiti.
17:12:14 7 It's pretty bad.

17:12:15 8 Q. Pretty bad, yeah.

17:12:16 9 A. Yeah.

17:12:16 10 Q. You think the graffiti is pretty bad; right?

17:12:20 11 A. Well, "The world will end." Yeah, I can
17:12:26 12 understand about it.

17:12:26 13 Q. Does the "all niggers must die," does that
17:12:30 14 bother you, too?

17:12:31 15 A. Of course. Nobody is supposed to die and
17:12:34 16 that's a bad word to say. So yeah.

17:12:37 17 Q. Were you aware -- when you were walking around
17:12:40 18 during your rounds did you ever hear the N word?

17:12:44 19 A. No, no, no, no, no.

17:12:46 20 Q. Never did.

17:12:47 21 A. No, no, no.

17:12:47 22 Q. And the swastika that's on this, that's pretty
17:12:51 23 bad, too, isn't it?

17:12:53 24 A. It is. But I haven't seen that before.

17:12:55 25 Q. Okay. Except when you received this picture?

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:12:58 1 A. No, no. I didn't receive this picture.

17:13:00 2 Q. You didn't receive the picture?

17:13:02 3 A. I don't think so. I don't remember. I don't
17:13:05 4 remember. I believe this picture -- it doesn't mention
17:13:11 5 here anything about this. This is the bathroom
17:13:20 6 located -- you see at first meant Kevin Colvin
17:13:24 7 reporting to Roel Kliatchko. We are not there.

17:13:29 8 Q. But you're at building services, aren't you?

17:13:32 9 A. At some point after this Roel Kliatchko sent
17:13:40 10 the request to several people here and copy us.

17:13:44 11 Q. Who is Matt Pennington; do you know?

17:13:48 12 A. No, I don't have -- I don't know. I heard the
17:13:51 13 name, I guess, but I don't remember him. I don't know.

17:13:53 14 Q. Is he a manager somewhere?

17:13:55 15 A. I don't know.

17:13:56 16 Q. And building services, though, that e-mail
17:14:00 17 would have gone to you; correct?

17:14:02 18 A. Yeah. It is for three -- about ten people,
17:14:09 19 twelve people, fifteen people. I don't remember how
17:14:14 20 many, but we received this -- I received the report
17:14:23 21 later on and graffiti was cleaned.

17:14:28 22 Q. Right. And it says, "Men's RR." That's men's
17:14:34 23 restroom; right?

17:14:35 24 A. Yes. K-26.

17:14:36 25 Q. K-26. Where is K-26 on [Exhibit 183](#)?

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:14:41 1 A. It should be --

17:14:43 2 Q. Is it to the left?

17:14:44 3 A. No. It doesn't show up here. It should be
17:14:49 4 around here.

17:14:49 5 Q. You're pointing to the left of the diagram
17:14:51 6 which is 183?

17:14:53 7 A. Yeah. This goes up to the column 23, 24. So
17:14:59 8 26 is a couple more columns to the left.

17:15:02 9 Q. If I understand the diagram correctly, each
17:15:06 10 one of the letters refers to a column position in the
17:15:10 11 factory; is that correct?

17:15:10 12 A. Yeah, yeah. This is the K is right here and
17:15:12 13 you need to go all the way to the 26 which is right
17:15:16 14 about right here.

17:15:17 15 Q. So the K-26 would be somewhat close to the
17:15:22 16 other elevator which is shown right there; is that
17:15:25 17 right?

17:15:25 18 A. Yes, yes. Yeah, it's close to the elevator.

17:15:30 19 Q. And then I notice on here that you sent this
17:15:33 20 e-mail at the top here about the graffiti found and
17:15:39 21 cleaned up to Liza Lipson. Do you see that?

17:15:42 22 A. Yeah.

17:15:43 23 Q. And Liza Lipson, she was in human resources;
17:15:50 24 correct?

17:15:50 25 A. Yeah.

VIDEOTAPED DEPOSITION OF ANDRES DONET

17:15:51 1 Q. Why did you send the e-mail saying you had
17:15:56 2 cleaned up the graffiti to Liza Lipson?

17:15:56 3 A. Well, it was the practice to send the
17:16:01 4 information to both HR and security.

17:16:10 5 Q. So you had a practice to send -- any time you
17:16:14 6 were cleaning up offensive graffiti you would be
17:16:17 7 sending it -- your practice was to send it to HR and to
17:16:23 8 security; is that correct --

17:16:23 9 MR. HASAN: Objection. Compound. Misstates
17:16:26 10 testimony.

17:16:26 11 MR. ORGAN: I'll break it up. In terms of --
17:16:29 12 I'll strike it and break it up.

17:16:30 13 BY MR. ORGAN:

17:16:30 14 Q. In terms of whenever you had a picture of
17:16:36 15 graffiti involving what might be offensive content, you
17:16:43 16 would send that to HR; is that correct?

17:16:46 17 MR. HASAN: Objection. Misstates his prior --
17:16:48 18 BY MR. ORGAN:

17:16:48 19 Q. -- to let them know you cleaned it up?

17:16:51 20 A. We sent any graffiti that was found to HR and
17:17:02 21 security.

17:17:03 22 Q. Okay.

17:17:04 23 A. Offensive or not offensive, that was the
17:17:07 24 practice and still is.

17:17:09 25 Q. And still is?

REPORTER'S CERTIFICATE

I, Peter Torreano, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, do hereby certify:

That the witness in the foregoing deposition was administered an oath to testify to the whole truth in the within-entitled cause; that said deposition was taken at the time and place therein cited; that the testimony of the said witness was reported by me and was thereafter transcribed under my direction into typewriting; that the foregoing is a full and accurate record of said testimony; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Pursuant to Federal Rule 30(e), transcript review was requested.

I further certify that I am not of counsel nor attorney for any of the parties in the foregoing deposition and caption named nor in any way interested in the outcome of the cause named in said caption.

Dated: November 2, 2019

PETER TORREANO, CSR NO. 7623

Exhibit E

Message

From: Andres Donet [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ANDRES L DONETD49]
Sent: 5/21/2016 7:59:25 PM
To: Liza Lipson [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Liza Lipsonb7a]; Gregory Slettvet [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Gsltvet]
CC: Andre' Lalljie [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=User8d52a49b]; Victor Quintero [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Victor Quintero3a3]; Edward Romero [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Edward Romeroe38]; James Moffitt [/O=TESLA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=James Moffitt94f]
Subject: FW: Racism writing the bathroom
Attachments: 20160521_105018_resized.jpg

Graffiti found and cleaned up. Men's RR K-26.

Regards,

Andres Donet | Facilities Contract Supervisor | Facilities
45500 Fremont Blvd. | Fremont, CA 94538
c: 650.730.0103 | adonet@teslamotors.com



From: Roel Kliatchko
Sent: Saturday, May 21, 2016 11:13 AM
To: Kevin Colvin <kcolvin@tesla.com>; Jonathan Baldoza <jbaldoza@tesla.com>; Rob Lewis <kelewis@tesla.com>; Robin Aylsworth <raylsworth@tesla.com>
Cc: buildingservices@teslamotors.com <buildingservices@tesla.com>; Matt Pennington <mpennington@tesla.com>
Subject: RE: Racism writing the the bathroom

Adding Robin A.

Kevin,

Can you provide nearest column # and what floor?

Building services can we send a Team member for clean up?

Best Regards,

Roel Kliatchko (SDI) Supervisor
| 45500 Fremont Blvd. Fremont, CA 94538 |
| Cell: (510) 203-6146 | rkliatchko@teslamotors.com |

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
EX 109
CASE NO. <u>17-cv-06748-WHO</u>
DATE ENTERED _____
BY _____
DEPUTY CLERK

From: Kevin Colvin
Sent: Saturday, May 21, 2016 11:02 AM
To: Roel Kliatchko; Jonathan Baldoza; Rob Lewis
Subject: Racism writing the the bathroom

This is in the bathroom located by the elevator while walking upstairs

The writing says "All niggers must die"

Kevin Colvin
PWT SDU Inverter
Production Associate

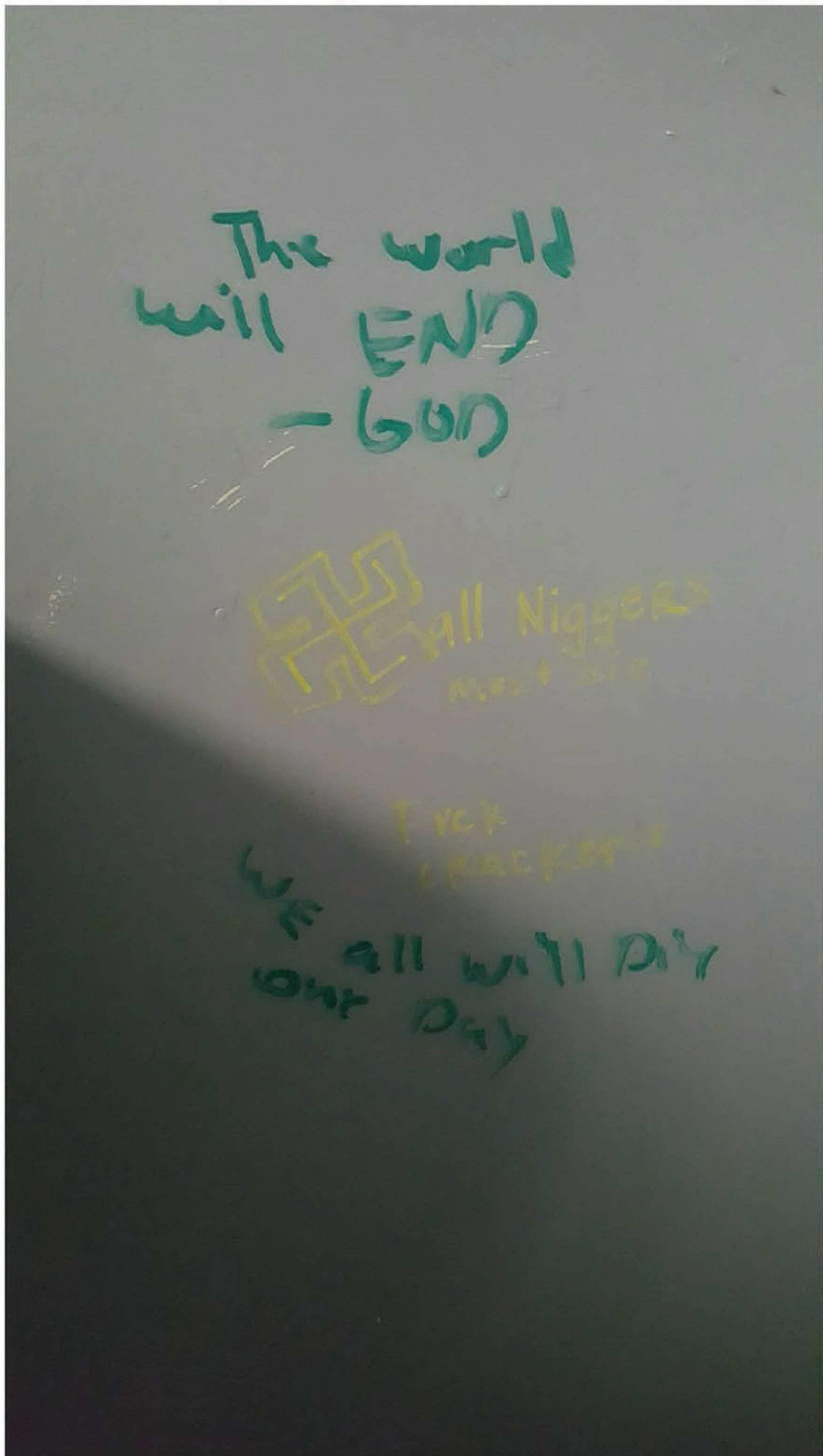


Exhibit F

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APPEARANCES: (CONTINUED)

For Defendants: SHEPPARD MULLIN RICHTER & HAMPTON LLP
333 S. Hope Street
43rd Floor
Los Angeles, California 90017

BY: TRACEY A. KENNEDY, ESQ.

SHEPPARD MULLIN RICHTER & HAMPTON, LLP
379 Lytton Ave
Palo Alto, California 94301

BY: PATRICIA M. JENG, ESQ.

SHEPPARD MULLIN RICHTER & HAMPTON LLP
Four Embarcadero Center
17th Floor
San Francisco, California 94111

BY: SUSAN Q. HAINES, ESQ.

Also Present: JOSEPH ALM, ESQ.
- Tesla, Inc.

YUSUF MOHAMED, ESQ.
- Tesla, Inc.

VALERIE CAPERS WORKMAN
- Tesla, Inc.

- - -

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PROCEEDINGS

1 MR. ORGAN: Yes, I did, Your Honor.

2 THE COURT: Given the absence of any overlap with

3 Diaz's work, work areas, or supervisors, this testimony is not

4 relevant to Diaz's case-in-chief.

5 As noted above, it could become relevant if Tesla relies

6 on the Faragher-Elzerth defense. That determination will be

7 determined at trial.

8 MR. ORGAN: Yes, Your Honor.

9 THE COURT: So if it's coming in, it's coming in in

10 rebuttal.

11 MR. ORGAN: Yes, Your Honor.

12 THE COURT: Okay?

13 MR. ORGAN: I understand. Thank you.

14 THE COURT: You filled in zero gaps that I identified

15 with respect to Mr. Jones' testimony. Was he deposed in this

16 case?

17 MR. ORGAN: No. He's been a witness in two

18 arbitrations. Defendant has cross-examined him twice.

19 THE COURT: All right. Well, so he's not testifying

20 unless the situation changes with respect to what Tesla does

21 with respect to his defense.

22 MR. ORGAN: Okay. Thank you, Your Honor.

23 THE COURT: And let me make this suggestion, that you

24 spend your time working on your case and not trying the case in

25 the papers. The lawyers need to focus on what happens in this

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OPENING STATEMENT / KENNEDY

1 a decision was made that they were going to talk to him about
2 becoming an elevator operator instead of an elevator operator
3 lead. And during this time period, he's given a final written
4 warning about his interpersonal interactions with other folks.
5 It is unfortunate that Mr. Diaz's mother passed away on
6 February 27th, 2016, according to an email that he sent to
7 Mr. Romero. He sent it about a week and a half after his
8 mother unfortunately passed away. He sent the email on
9 March 4th, 2016, which I think is about the last day he was at
10 the Tesla facility. And he says: I'm going to take leave on
11 March 9th, 10th, and 11th. I will be back to work on the 12th.
12 During this time, there are calls to Mr. Diaz about
13 whether or not he's going to take the elevator operator
14 position, no longer be the lead. He doesn't respond, and we
15 found out in this lawsuit he was looking for other jobs
16 starting on March the 17th. He was supposed to let Ed Romero
17 know by the 17th if he was going to become the elevator
18 operator. No response.
19 So at some point in time Mr. Diaz submits a doctor's note
20 saying he's going to be out for three weeks. He doesn't send
21 it to Tesla. He sends it to Wayne Jackson of nextSource, his
22 employer.
23 He doesn't return back to work, and at some point in time
24 CitiStaff, not Tesla, terminates Mr. Diaz's employment
25 agreement/arrangement with CitiStaff.

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OPENING STATEMENT / KENNEDY

1 So the last time that Mr. Diaz was actually at the Tesla
2 facility was early March of 2016.
3 Now, that's what occurred with his performance. You're
4 going to hear evidence in this case and no one is going to
5 dispute that Mr. Diaz did make complaints during his
6 nine-and-a-half month assignment at the Tesla facility.
7 These are the complaints that he made. These complaints
8 are all in writing. He's a very smart man. He's been around
9 the block. At one point in time, according to his resume, he
10 actually ran his own franchise. He knows how things work.
11 The evidence is going to show that when he felt strongly
12 about something, he had no problem documenting it in writing to
13 anyone who would listen.
14 And in July of 2015 he did make a complaint about a fellow
15 employee. This is Judy Timbreza, and he's a male, and about
16 some altercation. You're going to hear testimony from Tom
17 Kawasaki about that and Mr. Diaz.
18 At the time in all the recorded information no one says
19 the "N" word. There are emails that there were comments that
20 were racial in nature. We don't dispute that. Absolutely.
21 That's what the documentation says.
22 The documentation is also going to say that there was an
23 investigation. Judy Timbreza, one, did not work for Tesla. He
24 worked for a staffing agency. The matter was investigated.
25 Judy Timbreza was gone. Mr. Diaz at that time never had any

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OPENING STATEMENT / KENNEDY

1 more contact with Judy Timbreza. He admitted that under oath
2 in his deposition.
3 So as of July of 2015, Mr. Diaz knows you make a
4 complaint, document it, it's resolved, and it's done. At no
5 point in time as of July 31st, 2015, did Mr. Diaz put anything
6 in writing about any of these horrible racial slurs.
7 On October 17th, 2015, Ramon Martinez and Owen Diaz had an
8 argument at the elevator, absolutely. They're arguing about
9 getting these materials in the elevator, out of the elevator,
10 and the like.
11 Mr. Ramon Martinez actually complained first about Owen
12 Diaz, and Mr. Martinez explained about being unprofessional.
13 He just wants Mr. Diaz to treat him professionally. Those are
14 his words in his email.
15 Shortly thereafter, Mr. Diaz complains about Ramon
16 Martinez, and he complains about the same thing and also
17 accuses Ramon Martinez of threatening him. You're going to
18 hear testimony from both of them. You'll have to decide what
19 actually happened.
20 But what is most important and telling about this is that
21 according to the evidence, at this time on October 17th, 2015,
22 there's no negative interaction between Ramon Martinez and Owen
23 Diaz. Ramon Martinez is going to come in and testify that when
24 Mr. Diaz first came to work at the location, they were
25 friendly. They got along. Mr. Diaz talked to Mr. Martinez

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OPENING STATEMENT / KENNEDY

1 about how to get ahead, how do things work, and the like.
2 Ramon Martinez was a lead. So was Mr. Diaz.
3 According to the testimony, after the lawsuit was filed,
4 Mr. Diaz then said that as of this time Ramon Martinez had
5 called him the "N" word and "porch monkey" and everything else
6 under the sun; but when he had the opportunity to actually
7 write a complaint to Ed Romero about the conduct of Ramon
8 Martinez, none of those words are ever in any text message,
9 email, and the like.
10 So if, in fact, it had happened and Tesla had been made
11 aware of it, they could have handled it. If, in fact, it had
12 happened. It didn't happen. All of these words that according
13 to Mr. Diaz, the "I hate you 'N,'" "I hate you effing 'N,'" "I
14 wish all you 'Ns' would die," none of that was there.
15 After this October 17th, 2015, incident, both gentlemen
16 were talked to and the matter was over with.
17 A few days later, November 5th, 2015, there's an incident
18 with a contract worker, Rothaij Foster, with Mr. Diaz. At that
19 time Mr. Diaz's testimony was that he, as a lead, was training
20 Rothaij Foster on the elevators. According to the written
21 complaint by Mr. Diaz, Rothaij Foster was threatening him and
22 doing other things.
23 The matter was investigated. Rothaij Foster was walked
24 out of the facility never to be seen from again. Rothaij
25 Foster had a different perspective on it, but that was not

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KAWASAKI - DIRECT / ORGAN

1 him?
2 A. So when Ed Romero came in, Victor and Jaime said: Hey,
3 this is your new supervisor. This is who you report to. You
4 cc him on every email that you send out.
5 Q. Okay. Were you still reporting to Jaime Salazar at that
6 point too?
7 A. Correct. I was reporting to all of them. He just came
8 in.
9 Q. And both Jaime and Ed Romero, they were both under Victor
10 Quintero; is that right?
11 A. Correct.
12 Q. Now, at some point you send an email regarding Owen Diaz.
13 Do you remember that?
14 A. It's vaguely familiar. I believe he had an altercation
15 with another employee at the elevators.
16 Q. Why don't you look at Exhibit 38 and see if you recognize
17 it.
18 (Witness complied.)
19 A. Yes. This was an issue where they had a verbal
20 altercation, which they had a big altercation together. And I
21 put Ed, Victor, and Jaime and made them aware of it, because we
22 worked an overnight shift and these guys worked the day shift.
23 So the only way to get ahold of them was through email and they
24 would respond in the mornings.
25 Q. The people who -- the supervisor --

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KAWASAKI - DIRECT / ORGAN

1 A. My supervisors; correct.
2 Q. And you worked the night shift along with Mr. Diaz and
3 Mr. Timbreza; is that right?
4 A. Correct.
5 MR. ORGAN: Okay. Your Honor, I'd move Exhibit 38
6 into evidence.
7 THE COURT: Any objection?
8 MS. JENG: No.
9 THE COURT: All right. It's admitted.
10 (Trial Exhibit 38 received in evidence).
11 (Document displayed.)
12 BY MR. ORGAN:
13 Q. And so you mentioned there was an altercation that made
14 you send the email. So if you can, describe what happened for
15 the jury that day? How did you become first aware of the
16 altercation?
17 A. So at this point in Tesla, just to give a little
18 background, I was actually bumped up to the overnight shift
19 lead. So I had a bunch of different departments that I had to
20 cover at that time.
21 I was -- got a phone call saying there was an altercation
22 at the elevators, that they were having an issue. I show up.
23 They were actually face-to-face, looking like they were arguing
24 with each other about to fight.
25 So my immediate recourse was to push them aside, separate

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KAWASAKI - DIRECT / ORGAN

1 them. There was some people around, so I asked questions:
2 What happened? What's going on? Did anybody else see it?
3 Because I wasn't there at the time. I was at a different
4 section of the warehouse.
5 But when I did pull up, they were really about close.
6 They didn't touch each other, but they were face-to-face like
7 they were about to fight, and I separated them.
8 And when I asked people what happened, there was some
9 racial slurs thrown in nature. That's what I got from people.
10 So I immediately sent Judy Timbreza home because they said he
11 was saying the slurs.
12 Q. Okay. And did you talk to Owen Diaz?
13 A. I did.
14 Q. And what did -- did Owen Diaz tell you what Judy Timbreza
15 had called him?
16 A. So I don't -- I didn't put anything in -- I just put
17 "racial in nature" because I'm not comfortable using those
18 words that were thrown. It's just not me. I don't throw those
19 words around lightly.
20 But, yeah, he said the "N" bomb was thrown and the --
21 called him a "coon" and things of that nature. But I don't
22 like using those words. It's not me. So I just put "racial in
23 nature" in the email. That was the best way I could phrase it
24 at that time.
25 Q. Okay. But you do remember then that Mr. Diaz said that

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KAWASAKI - DIRECT / ORGAN

1 Mr. Timbreza called him the "N" word; is that right?
2 A. He said that. And then as, like, other people they are
3 witnesses -- like I said, this was all new to me being a
4 supervisor at the time. I just -- I felt like I did my due
5 diligence putting it into an email and giving it to my higher
6 ups.
7 Q. So if someone had represented to the jury that Owen Diaz
8 did not complain about the "N" word, that no "N" word was
9 reported, that would not be correct; is that accurate?
10 A. Yes.
11 Q. Okay. And then you -- I believe after this happens, you
12 have a conversation -- well, strike that.
13 Do you have a conversation with Ed Romero at any time
14 about this altercation between Mr. Timbreza and Mr. Diaz?
15 A. So this altercation happened. I immediately sent Judy
16 home for the night. I believe this happened close to a
17 weekend. It could have been a Thursday or a Wednesday. It
18 could have been a Friday. I knew it was close. I knew they
19 were both due back next week to work a shift together, and I
20 think I asked Ed or Victor or one of them: Hey, what's going
21 on? What -- are we taking -- what actions are you guys taking
22 in this? Can they work together or can they not? After that,
23 it was out of my hands.
24 Q. Did you mention to Mr. Romero -- well, did Mr. Romero tell
25 you anything about receiving your email?

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1 Mr. Romero. And that will be the rule of the case.	
2 All right. Have a good afternoon everybody.	
3 (Whereupon at 1:30 further proceedings	
4 were adjourned until Tuesday, September 28, 2021	
5 at 8:00 a.m.)	
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(SWORN)	128 1
Direct Examination by Mr. Organ	129 1
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TRIAL EXHIBITS	IDEN EVID VOL.
33	156 1
37	83 1
38	78 1
39	86 1
40	85 1
41	146 1
104	93 1
106	165 1

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TRIAL EXHIBITS	IDEN EVID VOL.
202	75 1
222	91 1
235	95 1
235	118 1
240	153 1
366	72 1
- - -	

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Monday, September 27, 2021

Exhibit G

Diaz vs Tesla, Inc.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ORRICK

DEMETRIC DI-AZ, OWEN DIAZ AND)
LAMAR PATTERSON)
)
Plaintiffs,)
)
vs.) No. C 17-6748 WHO
)
TESLA, INC., dba TESLA MOTORS,)
INC., CITISTAFF SOLUTIONS, INC.,)
WEST VALLEY STAFFING GROUP,)
CHARTWELL STAFFING SERVICES, INC.,)
and DOES 1-50, inclusive,)
)
Defendants.)
)
) San Francisco, California
) Tuesday
) September 28, 2021
) 8:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Plaintiffs: ALEXANDER MORRISON & FEHR LLP
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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

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APPEARANCES: (CONTINUED)

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Also Present: JOSEPH ALM, ESQ.
- Tesla, Inc.
YUSUF MOHAMED, ESQ.
- Tesla, Inc.
- - -

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PROCEEDINGS

1 Tuesday - September 28, 2021 8:01 a.m.
2 P R O C E E D I N G S
3 ---000---
4 (Proceedings were heard out of presence of the jury.)
5 THE COURT: All right. There are three things on my
6 mind this morning. The first one, I saw the Marconi
7 designations and counterdesignations. Did the plaintiffs
8 intend to respond to that, Marconi?
9 MR. ORGAN: Yes, Your Honor. I believe we did file
10 something late last night; or if not, then we're planning to
11 file something early this morning.
12 THE COURT: Okay. I didn't see it when I came in this
13 morning.
14 MR. ORGAN: Okay.
15 THE COURT: I could have missed it, so I'll go take a
16 look.
17 When do you expect -- when would you like to put that on?
18 MR. ORGAN: I think at the earliest it would be
19 tomorrow, Your Honor.
20 THE COURT: Okay. I'll take a look; and if it's -- if
21 I can get at it while you're still here --
22 MR. ORGAN: I'll check with my colleague to make sure.
23 I wasn't preparing it, so...
24 THE COURT: All right. Then the second thing is the
25 Demetri Di-az objections. And I'll sustain the remaining

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1 objections to the counterdesignations. The employment-related
2 one on West Valley is not relevant, and 403 I think also
3 applies because it would be confusing. And it's just --
4 there's not enough information, even if it was relevant, to
5 actually get his view on who he was employed by.
6 And the other designation, which is Designation Number 9,
7 what happened outside of the workplace doesn't matter. The use
8 of the "N" word outside of the workplace doesn't matter, and I
9 think 403 also applies.
10 So that's my ruling on those.
11 And then the final thing on my mind is I am going to post
12 at some point, when I let Ms. Davis know that she can do it and
13 she has the time to do it, draft final Jury Instructions. So
14 I've put them in the way that I think they ought to go. I've
15 left the sequencing in the way that you did, but I now have
16 them in a form that we can actually use on Friday.
17 So what I want you to do is, if you have any objections to
18 the instructions, any additions to the instructions, anything
19 with respect to the instructions other than the way that
20 they're currently presented, post by Thursday at 3:00 o'clock
21 what else you would like to see in the instructions.
22 And refer to the instruction by the page number. So I've
23 paginated them. I've left the numbers at the top blank because
24 I don't think we'll be using all of the sort of general
25 instructions that are there.

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JACKSON - DIRECT / ALEXANDER

1 A. Which binder do I go to? There's two here.
 2 Q. Pick one and let's see if that's the one that has it.
 3 A. This is 39. You said 29?
 4 Q. There should be an Exhibit 29.
 5 THE COURT: I think neither of these have 29.
 6 THE WITNESS: Yeah. I don't have a 29. I see 39.
 7 MR. ALEXANDER: Is it possible to display 29 for the
 8 witness?
 9 THE COURT: Is this showing to the jury at the moment?
 10 MR. ALEXANDER: It's not, I don't believe.
 11 THE CLERK: Not yet.
 12 THE COURT: Okay. Good.
 13 All right. Yes. So this is fine.
 14 BY MR. ALEXANDER
 15 Q. If you could look to the screen to your right, there is a
 16 document displayed, Exhibit No. 29. It is the Tesla
 17 Anti-Harassment Policy. Do you see that?
 18 A. Yes, sir.
 19 Q. Were you familiar with that policy during the time frame
 20 that you were at Tesla working at nextSource?
 21 A. Yes.
 22 Q. And that policy, was that policy given to the contract
 23 employees?
 24 MS. JENG: Objection. Calls for speculation.
 25 THE COURT: Do you want to lay a foundation for that?

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JACKSON - DIRECT / ALEXANDER

1 Lay a foundation.
 2 BY MR. ALEXANDER:
 3 Q. With regard to the training that was given to employees,
 4 contract employees that were working at Tesla, did you have an
 5 understanding as to what they received before they were allowed
 6 to work at Tesla?
 7 A. I don't remember everything but, yeah, they had a packet
 8 that we were to give them.
 9 Q. Okay. And the packet that they were given, did that
 10 packet include Exhibit No. 29?
 11 A. I don't remember, but it quite possibly did. I would
 12 believe so.
 13 Q. So you don't know one way or another whether they received
 14 this document, but you believe that they did?
 15 A. I believe they did. I just -- like I said, it's been
 16 quite awhile. It's been four or five years so I can't remember
 17 all that.
 18 Q. And with regard to Exhibit No. 6, which also has not
 19 been -- I'm sorry.
 20 With regard to Exhibit No. 29, you said that you were
 21 familiar with that document?
 22 A. It looks familiar, yes.
 23 MR. ALEXANDER: May it be received into evidence, Your
 24 Honor?
 25 THE COURT: Is there any objection to 29?

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JACKSON - DIRECT / ALEXANDER

1 MS. JENG: I think there lacks foundation from this
 2 witness.
 3 THE COURT: I think that's true. So I'll sustain the
 4 objection.
 5 MR. ALEXANDER: Okay.
 6 With regard to Tesla's Anti-Handbook Handbook, Exhibit
 7 No. 6, which has not yet been received into evidence, but may
 8 it be displayed so the witness can see it?
 9 THE COURT: Sure.
 10 MR. ALEXANDER: Your Honor, if I could, Exhibit
 11 No. 368 is the same as Plaintiff's Exhibit No. 29, and the
 12 defendant has stipulated to admission of that document.
 13 THE COURT: Okay. That's why I told you to get these
 14 numbers straight so that we didn't have duplicates.
 15 Would you like to confirm that that's the case so that
 16 this document can be admitted into evidence?
 17 (Brief pause.)
 18 THE COURT: I'm going to accept the representation of
 19 the plaintiffs with respect to this document, and it will be
 20 admitted.
 21 (Trial Exhibit 368 received in evidence)
 22 THE COURT: So go ahead, Mr. Alexander.
 23 MR. ALEXANDER: Thank you, Your Honor.
 24 BY MR. ALEXANDER
 25 Q. With regard to Exhibit 6, the Anti-Handbook Handbook that

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JACKSON - DIRECT / ALEXANDER

1 is on your screen, during the time frame that you were at
 2 nextSource working for Tesla, did you have familiarity with
 3 that document?
 4 A. I don't recall this particular document.
 5 Q. So the Anti-Handbook Handbook, you had never seen it while
 6 performing services for Tesla; correct?
 7 A. I can't say I've never seen it. I'm just saying I don't
 8 remember this particular document.
 9 Q. Okay.
 10 A. I could very well have seen it, but I just don't remember.
 11 There was a packet that we gave them so they could have very
 12 well been in there.
 13 Q. And with regard to Exhibit No. 6, when you say it very
 14 well could have been in there, you don't know for a fact
 15 whether the Anti-Handbook Handbook was actually provided to
 16 contract employees; is that correct?
 17 A. Yes, I don't recall.
 18 MR. ORGAN: May we publish -- you wanted to publish
 19 the --
 20 MR. ALEXANDER: Not 6. He doesn't remember.
 21 MR. ORGAN: Okay. Fair enough.
 22 BY MR. ALEXANDER
 23 Q. Now, with regard to use of the "N" word inside the
 24 workplace, you heard the "N" word -- and you understand what I
 25 mean, by the "N" word I hope -- used inside the Tesla factory;

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JACKSON - DIRECT / ALEXANDER

1 is that correct?

2 MS. JENG: Objection. Motion in Limine.

3 THE COURT: Could you use a point in time? Reference

4 the time period that this was used; in other words, during the

5 time that Mr. Diaz was employed in the factory.

6 MS. JENG: Your Honor, if I could --

7 BY MR. ALEXANDER

8 Q. During the --

9 THE COURT: Hang on just a second.

10 Ms. Jeng?

11 MS. JENG: Could I just direct your attention to

12 Page 7, Lines 15 to 23, of your order?

13 MR. ALEXANDER: Your Honor, may I simply rephrase?

14 THE COURT: I'm sorry?

15 MR. ALEXANDER: I would simply like to rephrase the

16 question.

17 THE COURT: Let me just look at what Ms. Jeng is

18 referring me to,

19 (Pause in proceedings.)

20 THE COURT: I'm going to allow this general line as

21 long as you rephrase.

22 MR. ALEXANDER: Thank you, Your Honor.

23 THE COURT: Overruled.

24 BY MR. ALEXANDER

25 Q. During the time frame of 2015 to 2016, did you hear the

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JACKSON - DIRECT / ALEXANDER

1 "N" word used inside the workplace at Tesla?

2 A. Yes, sir.

3 Q. And you heard it used quite a few times; right?

4 A. Yes, sir.

5 Q. And it would be fair to say that as you walked throughout

6 the factory, you heard it on a daily basis?

7 A. Yes, sir.

8 Q. And when you say "throughout the factory," that includes

9 the satellite cafeterias; right?

10 A. I wouldn't -- I wouldn't limit where it was said in the

11 factory. It was said quite often. Not always in a derogatory

12 manner. Sometimes as they would say "my," you know, like as in

13 friend, but it was inappropriate.

14 Q. So you heard n-i-g-g-e-r and you heard n-i-g-g-a --

15 A. Yes, sir.

16 Q. -- throughout the workplace?

17 A. Yes, sir.

18 Q. And you heard it used by both African-Americans and

19 non-African-Americans; isn't that correct?

20 MS. JENG: Objection. Leading.

21 THE COURT: Sustained.

22 BY MR. ALEXANDER

23 Q. At the point when you were performing services for Tesla,

24 you were performing services through nextSource; correct?

25 A. Yes, sir.

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JACKSON - DIRECT / ALEXANDER

1 Q. And nextSource had a contract with Tesla to perform

2 services at Tesla's behest; is that correct?

3 MS. JENG: Objection. Calls for speculation.

4 THE COURT: Overruled. Either he knows that or not.

5 THE WITNESS: I was not involved in the contract

6 negotiations with Tesla so I'm not sure exactly what contracts

7 nextSource and Tesla had.

8 BY MR. ALEXANDER

9 Q. You understood that there was a contract between Tesla

10 and nextSource for nextSource to provide services to Tesla;

11 correct?

12 A. Yes, I believe so.

13 Q. And in your role at nextSource, you were performing

14 services based on direction given by Tesla; is that correct?

15 A. I was based on nextSource. I worked for nextSource.

16 I didn't work for Tesla.

17 Q. Okay. I understand that you didn't work for Tesla, but

18 isn't it correct that you performed duties at the direction of

19 Tesla?

20 A. Yes.

21 MS. JENG: Objection. Leading.

22 THE COURT: Overruled. You can answer. And I think

23 you did. Was the answer "yes"?

24 THE WITNESS: Yes.

25

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JACKSON - DIRECT / ALEXANDER

1 BY MR. ALEXANDER

2 Q. And so on occasion when you walked through the factory and

3 you heard the "N" word, you mentioned to someone that that

4 wasn't appropriate; right?

5 A. Yes.

6 Q. Okay. But most of the time you simply ignored it; right?

7 A. Yes.

8 Q. And were you offended by use of the "N" word inside the

9 Tesla workplace?

10 A. Yes, I was.

11 Q. And would it be fair to say that you didn't feel that you

12 had the power to stop the conduct inside the workplace?

13 A. They did not work for me, sir. I couldn't -- I had no

14 supervisory skills or anything over those individuals.

15 Q. So even though you were at nextSource and you were

16 supervising the staffing companies that were working as

17 contract employees inside the Tesla workplace, you did not feel

18 you had the power to stop the use of the "N" word inside the

19 workplace; correct?

20 A. I could not. They were not my employees.

21 Q. Okay.

22 A. It was not my place to advise them or direct them.

23 Q. Did you report your hearing of the "N" word to Tesla human

24 resources?

25 A. No, I did not.

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I N D E X
E X H I B I T S

TRIAL EXHIBITS	IDEN	EVID	VOL.
76		242	2
83	350	351	2
92		233	2
103		238	2
274		280	2
284		277	2
287		247	2
287		302	2
296	191	193	2
301		288	2
306		201	2
308	202	203	2
312	204	205	2
368		222	2

- - -

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Tuesday, September 28, 2021

Exhibit H

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ORRICK

DEMETRIC DI-AZ, OWEN DIAZ AND)
LAMAR PATTERSON)
)
)
Plaintiffs,)
)
vs.) No. C 17-6748 WHO
)
)
TESLA, INC., dba TESLA MOTORS,)
INC., CITISTAFF SOLUTIONS, INC.,)
WEST VALLEY STAFFING GROUP,)
CHARTWELL STAFFING SERVICES, INC.,)
and DOES 1-50, inclusive,)
)
Defendants.)
)
San Francisco, California
Wednesday
September 29, 2021
8:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

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Also Present: JOSEPH ALM, ESQ.
- Tesla, Inc.

YUSUF MOHAMED, ESQ.
- Tesla, Inc.

VALERIE CAPERS WORKMAN
- Tesla, Inc.

- - -

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PROCEEDINGS

1 Wednesday - September 29, 2021 8:01 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard out of presence of the jury.)

5 THE COURT: All right. There are two things on my

6 mind this morning. One is the counter designations and

7 objections regarding Erin Marconi. And I think in every

8 instance I'm going to overrule the objection to the counter

9 designation and overrule the objection to the testimony. So

10 all of the testimony can come in that the parties are

11 interested in.

12 MR. ORGAN: Your Honor, just a question on that then.

13 With respect to how they are presented, do you want the

14 designations presented with the counter designations then

15 together?

16 THE COURT: Yeah, I think that's the smoothest way of

17 dealing with things.

18 MR. ORGAN: So we'll have one video.

19 THE COURT: One video.

20 MR. ORGAN: In terms of the time, Your Honor --

21 THE COURT: You time it yourself.

22 MR. ORGAN: We'll produce that tonight. So we'll --

23 it's our intent to present it, then, tomorrow, Your Honor.

24 THE COURT: Great.

25 MR. ORGAN: Okay. Thank you.

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1 THE COURT: All right. And then the other thing I
2 just wanted to mention, yesterday I allowed Wayne Jackson to
3 testify about his experience of hearing the "N" word throughout
4 the factory. And on Monday I admitted Exhibit 106 concerning
5 Mr. Romero's credibility regarding his hearing of the "N" word.
6 I did so because it appears from Tesla's presentation of
7 the case, from the opening of the argument to the designations
8 in the depositions, that it wishes to minimize the use of the
9 "N" word in the workplace at Tesla, which is fine, but so this
10 counter evidence I think is relevant.

11 I am willing and inclined to give the jury a further
12 limiting instruction, and I can do that this morning. It would
13 be primarily at the defendant's -- I'll let the defendant
14 decide whether this is something that you would like or not,
15 but it would be to the effect of:

16 As you know, I admitted Exhibit 106 for the limited
17 purpose of your consideration of the credibility of
18 Mr. Romero's testimony. And yesterday I allowed Mr. Jackson to
19 testify about his experience hearing the "N" word in the Tesla
20 factory.

21 I want to remind you that this case is about Mr. Diaz and
22 the work environment that he experienced at the Tesla factory,
23 not what others in a different part of the facility
24 experienced.

25 MS. KENNEDY: Yes, Your Honor, that would be

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DIAZ - DIRECT / ORGAN

1 A. Just what I explained to you. I had told Tom Kawasaki
2 over a period that he had been calling me a "porch monkey" and
3 I had translated it. And then when he was leaving out the
4 elevator on that particular day after they was doing it, he
5 actually said the "N" word. So that's what made me pretty
6 upset at that point.
7 Q. Did you tell him about the mayate?
8 A. I explained everything to Tom.
9 Q. Okay. And then did you see Tom interviewing anybody
10 around there?
11 A. Yes.
12 Q. And tell the jury about that. What did he do?
13 A. Like I said, he started interviewing people after he broke
14 us up. He started talking to the people that was around trying
15 to find out is -- what he asked me. He was trying to
16 corroborate what I had told him what Judy Timbreza was saying.
17 Q. Okay. And then after that incident, did Judy Timbreza
18 call you any of those offensive terms again?
19 A. No. After that, I hadn't seen Judy Timbreza.
20 Q. Okay. Do you know what Tesla did with Judy Timbreza?
21 A. No. I was not privy to that, sir. I'm sorry.
22 Q. They didn't tell you?
23 A. No.
24 Q. Okay. And then if you could, turn to Exhibit 38.
25 MR. ORGAN: And I believe this is admitted,

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DIAZ - DIRECT / ORGAN

1 Your Honor.
2 MS. KENNEDY: Yes, Your Honor. It's admitted.
3 THE COURT: It is.
4 THE WITNESS: I only have 33 to 39. Unless is it in
5 this binder?
6 BY MR. ORGAN:
7 Q. That was my fault. I was putting this stuff together last
8 night, and I must have not put it in there.
9 A. Is it the white binder or the black binder?
10 MR. ORGAN: Can we show it to him, Your Honor, on the
11 screen?
12 Oh, can we publish it?
13 THE COURT: You can publish it. It's in.
14 MR. ORGAN: Yes, let's publish it to the jury.
15 (Document displayed.)
16 BY MR. ORGAN
17 Q. Look on your screen, Mr. Diaz. Can you see that?
18 A. Yes, sir, I can see it.
19 Q. If you look at the first line there, it says (as read):
20 "Elevator 2 employee Owen has brought to my
21 attention of comments being made towards him that are
22 racist in nature."
23 Did you consider the comments to be racist in nature?
24 A. Yes, I did, sir.
25 Q. Does that statement adequately describe, though, the

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DIAZ - DIRECT / ORGAN

1 actual statements that were made?
2 A. No, it was not.
3 Q. But you did report, you're sure you reported to Tom
4 Kawasaki those words, the "N" word and those other words that
5 were spoken; right?
6 A. Yes, I did report it to him.
7 Q. Okay. So based on what you had told Tom Kawasaki, you
8 would agree, would you not, that on July 31st you did report
9 the "N" word to your supervisor; right?
10 A. Yes. I verbally reported it to my supervisor.
11 Q. Okay. And tell me this. Did anyone tell you, when you
12 started at Tesla, who you were to report things to?
13 A. When I first started at Tesla -- well, before I started at
14 Tesla, I was talking to -- I can't remember her name. She was
15 a heavy-set Latino female that was at CitiStaff, and she told
16 me to direct all my concerns to Tesla or whoever was my
17 immediate supervisor over at Tesla.
18 Q. Okay. And this -- so the CitiStaff person told you to
19 report anything that happened to your immediate supervisor at
20 Tesla; is that right?
21 A. Yes, sir.
22 Q. Did anyone at Tesla ever tell you to do it any differently
23 than that?
24 A. No, sir.
25 Q. And did Tesla give you any training on harassment,

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DIAZ - DIRECT / ORGAN

1 discrimination, reporting it, that kind of stuff?
2 A. The only training that I received from Tesla was the
3 one-hour class to be able to get the badge, sir.
4 Q. In Exhibit 19?
5 A. Yes.
6 Q. Okay. I'd like to talk to you a little bit. You
7 mentioned in your deposition a person named Robert. Do you
8 remember a Robert?
9 A. Yes. Robert Hurtado.
10 Q. Who? Robert Hurtado?
11 A. Yes, sir.
12 Q. Now, when you were deposed, you didn't know his name?
13 A. No, I didn't know his name then.
14 Q. And --
15 A. Well, I knew his first name, not his last name.
16 Q. Right. If you could, turn to Exhibit 96. I hope that
17 one's in there.
18 A. White or black binder?
19 Q. 96 is not in there?
20 A. I'm searching for it right now.
21 THE COURT: Here.
22 (Whereupon document was tendered to the witness.)
23 THE WITNESS: Thank you, sir.
24 BY MR. ORGAN
25 Q. There is a picture there of somebody. Do you recognize

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DIAZ - DIRECT / ORGAN

- 1 that picture?
- 2 A. Yes. I recognize that as Robert Hurtado, one of my
- 3 harassers.
- 4 Q. Okay. So that's the guy who harassed you; right?
- 5 A. Yes, sir.
- 6 Q. And actually I showed you that picture before during
- 7 discovery after your deposition was over; correct?
- 8 A. Yes, you showed me. Tesla, I had asked them to show me a
- 9 picture and they didn't have any.
- 10 Q. In your deposition you asked them to show you a picture,
- 11 and they didn't show you one; right?
- 12 A. They asked me if I could recognize anybody. And I
- 13 actually told them if they produced a picture, then I probably
- 14 possibly could recognize them.
- 15 Q. Okay. Let me ask you, so this man, Robert Hurtado, did he
- 16 engage in any kind of harassing conduct towards you?
- 17 A. Yes, sir.
- 18 Q. And when did that harassing conduct towards you by
- 19 Mr. Hurtado, when did that start?
- 20 A. I'm going to say in about the fall of 2015.
- 21 Q. Okay. You -- when is it? You think it's fall?
- 22 A. Yes.
- 23 Q. Okay. Let me ask you this: Was it before Demetric
- 24 started working there?
- 25 A. I have to think when Demetric started working. I think

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DIAZ - DIRECT / ORGAN

- 1 Demetric started working in August or something like that.
- 2 Q. Yeah. And do you think that Robert Hurtado started
- 3 calling you or harassing you prior to Demetric coming?
- 4 A. It could have been before. It was awhile back. I'm not
- 5 100 percent sure.
- 6 Q. Okay. So perhaps in the August time frame then?
- 7 A. Yes.
- 8 Q. And what are the -- was the conduct, the harassment,
- 9 racial in nature?
- 10 A. Yes, it was.
- 11 Q. And if you could, tell the jury, what is the harassing
- 12 conduct that Robert Hurtado directed towards you based on your
- 13 race, what you consider to be based on your race?
- 14 A. Mr. Hurtado would call me the "N" word and call me "boy."
- 15 Q. Okay. How did -- can you tell the jury how Mr. Hurtado
- 16 used the "N" word towards you, if you recall?
- 17 A. He would pull into the elevator on pieces of equipment at
- 18 a time, and then he would say: "N," hurry up and push the
- 19 button.
- 20 Or I could be working the other elevator, moving -- moving
- 21 batteries or something like that, and then he would say: "N,"
- 22 hurry up and push the batteries into the elevator or out of the
- 23 elevator.
- 24 You know, he -- he would say things like: You "Ns" are
- 25 lazy, and stuff like that.

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DIAZ - DIRECT / ORGAN

- 1 Q. How many times do you think Robert Hurtado used the
- 2 "N" word towards you?
- 3 A. It was well north of 30 times.
- 4 Q. Okay. And how did -- you mentioned "boy." Did you
- 5 consider that offensive to be called a "boy"?
- 6 A. At that time I was in my forties so I'm a grown man.
- 7 Q. Right.
- 8 A. And "boy" is a term that slave masters used to use against
- 9 black people to let them know that they were their property.
- 10 Q. Do you remember how Mr. Hurtado used the word "boy"
- 11 towards you?
- 12 A. He would say: Boy, hurry up and push the batteries in the
- 13 elevator.
- 14 And I would try to remind him that, you know, I'm a grown
- 15 man. I'm not a boy. If I were to walk up to you, the first
- 16 thing I wouldn't say is: Hey, boy. Hey, man.
- 17 Q. So he used "boy" in a similar manner to the "N" word?
- 18 A. Yes, sir.
- 19 Q. Okay. Can you remember how many times he used "boy"
- 20 towards you?
- 21 A. No, I can't remember.
- 22 Q. Did he use the "N" word more than he did "boy"?
- 23 A. Yes, he did.
- 24 Q. Okay. And what was Robert Hurtado's position as far as
- 25 you understood it?

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DIAZ - DIRECT / ORGAN

- 1 A. He was the supervisor.
- 2 Q. Did he work for Tesla?
- 3 A. Yes, he was a Tesla employee.
- 4 Q. Tesla employee and a supervisor.
- 5 Okay. Let's talk about a man named Ramon Martinez. Do
- 6 you know a man named Ramon Martinez?
- 7 A. Yes, sir. That was another one of my harassers.
- 8 Q. Okay. And what was your understanding of Ramon Martinez's
- 9 role at the Tesla factory?
- 10 A. He was another supervisor.
- 11 Q. Okay. Now, if you could, tell the jury, what's the
- 12 difference between a lead and a supervisor at the Tesla
- 13 factory?
- 14 A. To me, it's really no difference. So I -- except, you
- 15 know, one reports to the other. You know, the supervisors
- 16 would come out and basically sometimes give us some orders, or
- 17 we would have to -- as leads, we would have to coordinate with
- 18 different supervisors and different -- in different departments
- 19 to make sure the material is being moved back and forth.
- 20 Q. Okay. And did Ramon Martinez have an ability to tell you
- 21 how to do anything, any part of your job?
- 22 A. Yes. To a limited capacity, yes.
- 23 Q. Okay. And what was it that -- you mentioned that he was
- 24 one of your harassers. What did Ramon Martinez do to harass
- 25 you? How did he do that?

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WHEELER - DIRECT / ALEXANDER

1 derogatory language used towards African-Americans as a spook.
2 Q. When you observed Owen in front of this bale, how did he
3 appear to you?
4 A. He seemed -- well, he was upset.
5 Q. Okay. And did he actually state that he was upset?
6 A. No.
7 Q. Okay. Now, at some point did Owen Diaz join -- I'm sorry.
8 And with regard to this drawing, did you find it
9 offensive?
10 A. The drawing, not so much. The words with the drawing,
11 absolutely.
12 Q. The words with the drawing?
13 A. Correct.
14 Q. And is there some point at which Ramon Diaz [sic] joined
15 the group of people standing there associated with that bale?
16 A. He did.
17 Q. And do you know who brought Ramon Diaz [sic] over?
18 A. Myself and Israel went to go retrieve him.
19 Q. And at the point when you retrieved him, did you have any
20 understanding that he had any involvement with this drawing?
21 A. Not at the moment. We went to go see who was baling.
22 Q. Okay. And how long was Mr. Diaz [sic] there before he
23 indicated that he was involved with the drawing?
24 THE COURT: Mr. Alexander, have you been referring to
25 Mr. Martinez or --

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WHEELER - DIRECT / ALEXANDER

1 MR. ALEXANDER: I'm sorry. Let me fix that.
2 THE COURT: Okay. And you might --
3 BY MR. ALEXANDER:
4 Q. How long was Mr. --
5 THE COURT: -- want to go back to an earlier question
6 that you asked about "Ramon Diaz" using the "N" word, because I
7 think you meant Mr. Martinez, but I don't know.
8 MR. ALEXANDER: I do. I'm sorry. Thank you.
9 BY MR. ALEXANDER
10 Q. With regard to use of the word "mayate," did
11 Mr. Ramirez -- Ramon Martinez -- did Ramon Martinez ever use
12 the "N" word or mayate in your presence?
13 A. Not in my presence.
14 Q. Okay. When Mr. Martinez was brought to this drawing, how
15 long was he in front of the drawing before he acknowledged any
16 involvement with it?
17 A. About five minutes, five to ten minutes.
18 Q. And ultimately what is it that he finally said after he
19 had been standing there for five minutes?
20 A. Once he realized the severity of the situation, he said
21 he's the one that drew the drawing.
22 Q. Now, did he say anything else? Did Mr. Martinez say
23 anything else during that time frame while you were standing in
24 front of the bale?
25 A. If I recall correctly, he said he thought it was a joke.

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WHEELER - DIRECT / ALEXANDER

1 Q. Did he say anything else?
2 A. Not to my recollection.
3 Q. Is there any point while he was standing there that
4 Mr. Martinez apologized?
5 A. No.
6 Q. You're sure of that?
7 A. I am not, but I do not remember an apology.
8 Q. Okay. Did Owen say that he thought that it was funny?
9 A. Owen did not find it funny at any point in time.
10 Q. Are there any occasions that you reported racial conduct
11 inside the workplace between 2015 and 2016?
12 A. Yes.
13 Q. And what incident happened with you that you thought was
14 racially motivated?
15 A. I was requesting a subordinate to delete a picture that he
16 had taken of another associate, and he refused to do so. And
17 in leaving, he -- yeah, he said: FU, "N" word, and then walked
18 away.
19 Q. And so this person who said "FU" and walked away, did you
20 report it?
21 A. I did.
22 Q. And who did you report it to?
23 A. To my immediate supervisors, Ramon Martinez and --
24 Q. Ramon Martinez was your immediate supervisor?
25 A. He was my partner, partner supervisor. We had two

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WHEELER - DIRECT / ALEXANDER

1 supervisors for the grave shift.
2 Q. And so as a result of reporting use of the "N" word
3 towards you to Ramon Martinez, what action was taken?
4 A. There was no action taken.
5 Q. Okay. And the person that had used the "N" word towards
6 you, what ultimately happened to that person in terms of his
7 position at the Tesla factory?
8 A. That individual received a promotion and was given his own
9 section.
10 Q. Now, is there any other incident that occurred to you
11 inside the workplace that you believed was racially motivated
12 directed towards you?
13 A. Yes.
14 Q. And can you describe that incident?
15 A. There was a night I had taken -- there was a night I had
16 taken lunch, and I was on my lunch for about an hour. And then
17 when I returned to my cart, I sat down, slid across the seat
18 like I did every night, and I felt something wet on my seat.
19 And it took me a second to process it. I got back up and there
20 was feces all over my seat, all over my pants. There was some
21 on my hands.
22 Q. And did you report this incident of finding feces on your
23 cart to anyone at Tesla?
24 A. I did.
25 Q. Who did you report that to?

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WHEELER - DIRECT / ALEXANDER

1 A. Umm, everybody. Security, all the supervisors, Ramon,
2 Jose Torres, Victor Quintero.
3 Q. Ed Romero?
4 A. Yes -- uh, I don't -- I do not recall for Ed, but...
5 Q. So the department that you worked in, Victor Quintero was
6 ultimately over your department?
7 A. Absolutely, yes.
8 Q. So you reported it to numerous people in management and
9 supervision inside Tesla; right?
10 A. I did, yes.
11 Q. Now, the location where you found your cart with feces on
12 it, were there cameras?
13 A. There were.
14 Q. Can you estimate how many cameras were present?
15 A. At least two.
16 Q. And from where those cameras were present, would it have
17 been -- is it your belief that those cameras would have caught
18 whoever left this on your cart?
19 MS. JENG: Objection. Calls for speculation.
20 THE COURT: Overruled. You can answer.
21 THE WITNESS: Absolutely. I parked my cart next to
22 Elon's original roadsters where the charging stations were.
23 BY MR. ALEXANDER
24 Q. And did you ask for Tesla to look at the video to figure
25 out who had left this feces on your cart?

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WHEELER - CROSS / JENG

1 A. I did.
2 Q. And did Tesla conduct an investigation to your knowledge?
3 A. They said there was no vision in that area.
4 Q. They said there was no vision in that area?
5 A. Correct.
6 Q. Who is it that told you that?
7 A. It just came from the security email.
8 Q. Did anyone ever interview you?
9 A. No.
10 Q. Was there any retraining that occurred of the workplace to
11 indicate this was inappropriate?
12 A. No.
13 Q. During the time frame that you were at Tesla, did anyone
14 ever train you that Tesla had a zero tolerance policy for
15 harassment in the workplace?
16 A. Not at all.
17 MR. ALEXANDER: Nothing further. Thank you.
18 THE COURT: Ms. Jeng.
19 CROSS-EXAMINATION
20 BY MS. JENG:
21 Q. Mr. Wheeler, you started working at the Fremont factory in
22 April of 2015; is that right?
23 A. Yes.
24 Q. You worked at the Fremont factory to until approximately
25 April 2016?

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WHEELER - CROSS / JENG

1 A. Yes.
2 Q. You never worked as an elevator operator; right?
3 A. No.
4 Q. Okay. And you were employed by Chartwell throughout your
5 entire assignment at Tesla; correct?
6 A. Correct.
7 Q. And you were assigned to Tesla through nextSource; is
8 that right?
9 A. Yes.
10 Q. After your assignment ended in April 2017, your employer
11 Chartwell actually placed you at a different assignment; is
12 that right?
13 A. Yes.
14 Q. At a bakery?
15 A. DES, yes.
16 Q. Okay. So you were never employed directly by Tesla; is
17 that right?
18 A. Correct.
19 Q. Okay. When you first started your assignment at the
20 factory through Chartwell, you actually received extensive
21 training through Chartwell; is that right?
22 A. Not extensive but, yes, training.
23 Q. All right. Can I direct you to your deposition
24 transcript -- it should be in front you -- Page 47, Line 20
25 through -- one second -- 47, Line 2 -- oh, sorry. 46 -- I'm

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WHEELER - CROSS / JENG

1 sorry. 46, Line 20 -- sorry. I'll come back to this.
2 You received certification for harassment training;
3 correct?
4 A. Can you repeat, please?
5 Q. Sure. You actually received a certification for
6 harassment training; correct?
7 A. I received certification for all training.
8 Q. I'm sorry. Say that again.
9 A. I received certification for all training.
10 Q. Including harassment training; is that right?
11 A. I cannot say directly.
12 Q. Okay. Okay. Owen was an elevator lead, to your
13 understanding; correct?
14 A. Correct.
15 Q. And as a lead, you were actually Owen's superior; is that
16 right?
17 A. Correct.
18 Q. So you were supervising Owen when Owen was a lead;
19 correct?
20 A. Yes.
21 Q. Okay. Ramon Martinez was also a lead; correct?
22 A. No. He was a supervisor.
23 Q. It's your belief that Ramon was a supervisor at the time
24 that you were a supervisor --
25 A. Yes.

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DIAZ - DIRECT / ORGAN

1 to set things up the way that they are, and so I appreciate
2 Ms. Kennedy asking where she can be.
3 But go wherever you can see what Mr. Organ is up to.
4 MS. KENNEDY: Okay. Thank you. Thank you, Your
5 Honor.
6 And I will speak up for the court reporter.
7 THE COURT: Mr. Organ, go ahead.
8 MR. ORGAN: Thank you, Your Honor.
9 DIRECT EXAMINATION RESUMED
10 BY MR. ORGAN
11 Q. Owen, if you could, turn to Exhibit 222.
12 A. 222, yes, sir.
13 MR. ORGAN: Which I believe is admitted, Your Honor.
14 BY MR. ORGAN
15 Q. This -- reading this email, who was it who promoted you to
16 a lead on August 17th of 2015? Do you know?
17 A. It was Victor Quintero.
18 Q. Okay. And who else told you that you had a promotion?
19 Anybody else other than Victor?
20 A. Edward Romero.
21 Q. Okay. Now, what I'd like to do now is move to an incident
22 on October 17th of 2015.
23 If you look at Exhibit 235 --
24 MR. ORGAN: And I believe this is admitted,
25 Your Honor.

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DIAZ - DIRECT / ORGAN

1 because Tom Kawasaki was taking a training class and he was
2 about to become a certified plumber.
3 Q. Okay. And what happened? What was said in terms of your
4 actions? Does he move towards you? Do you move towards him?
5 When you open the elevator -- strike that. I'll start over.
6 When you -- the elevator doors open. What happens?
7 A. As I'm explaining this to Mr. Foster, that Thomas Kawasaki
8 wouldn't be our immediate supervisor anymore, the elevator
9 doors parted, I saw Mr. Martinez sitting there on a blue
10 tugger. He --
11 Q. What's a tugger?
12 A. A tugger is a piece of equipment that Tesla uses to load
13 cardboard and other recycling materials onto. It's like a
14 train, and you pull all this heavy stuff through the -- through
15 the factory and deliver it to its destination.
16 Q. What does he do when the doors open? Ramon, what does he
17 do?
18 A. He jumps off the tugger and rushes into the elevator and
19 starts saying did I have a problem with him and starting
20 cursing and calling me the "N" word. He was saying: "Ns" are
21 shit. Excuse my language.
22 But as he was saying this, you know, he was getting closer
23 and closer, and he -- he had his fist balled up and: Do you
24 got a problem? He was saying he was going to beat me up and
25 stuff like that.

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DIAZ - DIRECT / ORGAN

1 MS. KENNEDY: Your Honor, no objection.
2 (Document displayed.)
3 BY MR. ORGAN
4 Q. So did you write Exhibit 235?
5 A. Yes, I did.
6 Q. And why did you write it?
7 A. Because I had an interaction, a negative interaction, with
8 Mr. Martinez.
9 Q. If you could, go back in time and take us back to that
10 point in time. How did this interaction with Ramon Martinez
11 start?
12 A. I -- all I can tell you, I don't know how it started. I
13 was training a new employee, which was Rothaj Foster.
14 Q. Are you a lead at this point in time?
15 A. Yes, sir.
16 Q. Okay. And so you're -- I'm sorry. I interrupted. You're
17 training who was it?
18 A. Rothaj Foster.
19 Q. Okay. And what happens in terms of -- between you and
20 Ramon Martinez?
21 A. So I'm training Mr. Foster, letting him know the policies
22 of the elevator and the things that we do on the elevator,
23 telling him when he gets his breaks and stuff like that. And
24 as I was starting to get to the point where Tom Kawasaki
25 wouldn't be our supervisor anymore, it would be Ed Romero,

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DIAZ - DIRECT / ORGAN

1 So what I did was, is I immediately threw my hands up into
2 the neutral position and opened my hands. I backed up against
3 the wall and actually ended up climbing a piece of equipment
4 that I was there with.
5 And he got so close he was within inches of my face, you
6 know. And I'm like: Hey, hey, man. I even cursed back. I
7 was telling him get the "F" out of my face.
8 And from there, it seemed like it was getting pretty
9 intense, and I pointed to the surveillance system and I'm like:
10 Hey, man, we're on surveillance. And after I told him that, he
11 rushed out of the elevator.
12 Q. Okay. And you mentioned he said the "N" word. That's not
13 in your Exhibit 235 in your statement. Why not? Why didn't
14 you include the "N" word in the statement if he had said it?
15 A. Umm, reason being is because we had the surveillance
16 system right there, you know. I just figured Tesla would pull
17 the -- pull the video surveillance and then come and interview
18 me and then we can discuss all that.
19 I just didn't put it in the email because, you know, like
20 I said, in a workplace, that word is not supposed to be used.
21 Q. Okay. But didn't you want Tesla to know about him using
22 the "N" word?
23 A. Yes. But I had complained before and, you know, it was
24 just like me complaining that I'm breathing.
25 Q. What do you mean by that?

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DIAZ - DIRECT / ORGAN

1 A. You know, you can -- I would tell Ed Romero at times, you
2 know, because what would end up happening is, is Ed Romero
3 would come in in the morning times and, you know, he would talk
4 to me. And we would sit there at the cafeteria and have
5 breakfast and stuff like that, and then me and Mr. Ed Romero
6 would go over some of the events that happened and some of the
7 things and ways that we can improve elevator -- elevator
8 efficiency.
9 Q. Did you -- on this date, did you have a conversation with
10 Ed Romero about what had happened between you and Ramon
11 Martinez?
12 A. I sent out an email letting them know and I tagged -- I
13 believe I tagged Mr. Romero into the email.
14 Q. Did you have a followup conversation with Mr. Romero?
15 A. Afterwards?
16 Q. Yeah. After you sent the email.
17 A. No. Mr. Romero, you know, what he did was -- I believe I
18 could have talked to him, but I asked him talk to him, but
19 Mr. Morerro [sic] -- I mean, Mr. Ed Romero -- oh, I butchered
20 his name, I'm sorry. Mr. Ed Romero, he had -- did like he
21 normally do: Get some rest and I'll deal with the situation.
22 Q. Okay. So did you tell Mr. Romero about the "N" word when
23 you talked to him personally?
24 A. Yes, I did, sir.
25 Q. And did you talk to Tom Kawasaki, too?

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DIAZ - DIRECT / ORGAN

1 A. Yes, I did. I called Mr. Kawasaki for advice on how to
2 handle the situation.
3 Q. Okay. And did you tell him about it, the "N" word?
4 A. Yes. I explained to Mr. Kawasaki about what was going on.
5 Q. Okay. Now, if I can, if you could turn to Exhibit 234.
6 MR. ORGAN: That should be in your notebook,
7 Your Honor. Yeah, okay.
8 And this is admissible, Your Honor. I'd move it into
9 evidence.
10 MS. KENNEDY: No objection. It's already admitted.
11 THE COURT: Okay. Go ahead.
12 MR. ORGAN: Okay. I didn't have that, so thank you.
13 (Document displayed)
14 BY MR. ORGAN
15 Q. This statement here is made by Mr. Martinez. Do you see
16 that?
17 A. Yes, I see it, sir.
18 Q. And he says you're acting in an unprofessional way. He
19 actually sent his about an hour and 15 minutes before you sent
20 yours -- an hour and 14 minutes before you sent -- an hour and
21 12 minutes before you sent yours.
22 Did you know that he had sent an email?
23 A. No, I did not.
24 Q. And you said that you had been using curse words; is that
25 correct?

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DIAZ - DIRECT / ORGAN

1 A. Yes, I used curse words. I told him to get the "F" out of
2 my face. So, you know, it was a heated argument.
3 Q. And you would agree that that's not professional; right?
4 A. No, that's not professional.
5 Q. Okay. But did you know about his email at the time that
6 you had the interaction with him?
7 A. No, I did not.
8 Q. Okay. And I notice you didn't copy Ramon Martinez on your
9 complaint letter?
10 A. No, I did not.
11 Q. Okay. Now, let's go forward to January, January 21st of
12 2016.
13 Oh, before we do that. So with respect to this
14 10/17 incident, did you report the "N" word?
15 A. Yes, I did.
16 Q. And you reported it to both Kawasaki --
17 A. And Ed Romero.
18 Q. -- and Ed Romero?
19 Okay. Did anybody at Tesla ever tell you if you
20 complained about something, you had to complain about it in
21 writing?
22 A. No, they did not.
23 Q. Okay. While we have that up there, before we go to
24 January, you had an interaction -- after this 10/17 incident in
25 the elevator, you had an interaction with Rothaj Foster; is

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DIAZ - DIRECT / ORGAN

1 that right?
2 A. Yes, I did, sir.
3 Q. You were supervising him?
4 A. Yes, I did, sir.
5 Q. And there's a date on here November 5th. Did that
6 interaction involve the "N" word in any way?
7 A. No. Mr. Foster told me he was going to shoot me. He
8 never called me the "N" word.
9 Q. Okay. So there was no "N" word to report on November 5th;
10 is that correct?
11 A. That's correct, sir.
12 Q. Okay. Let's go to January 21st, 2016. Tell me what you
13 were doing that night? Were you working the night shift?
14 A. Yes, sir.
15 Q. And just tell the jury, what's the night shift? What are
16 the hours for the night shift?
17 A. From 6:00 p.m. to 6:00 a.m.
18 Q. Okay. And what were you doing the night of January 21st?
19 A. The night of January 21st I was, umm, doing what I would
20 normally do. The line had asked me to bring up a certain
21 product. It was some plastic things that they needed to put
22 inside the batteries. If they didn't get them up to the line
23 in enough time, the line would go down.
24 So I had got the stuff. I had brought it upstairs, and I
25 headed over to the line. I believe I was gone away from the

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DIAZ - CROSS / KENNEDY

1 BY MS. KENNEDY:
2 Q. My question is: Did he tell you that?
3 A. No, he did not tell me that.
4 Q. And as you sit here today, do you have any knowledge one
5 way or the other if your son Demetric Di-az ever applied to
6 work directly for Tesla, not through a staffing agency?
7 MR. ORGAN: Objection. Relevance, Your Honor.
8 THE COURT: Sustained.
9 MS. KENNEDY: Okay.
10 BY MS. KENNEDY
11 Q. Now, as I understand from your testimony, that starting at
12 least maybe more than two weeks and less than a month after you
13 started your assignment at Tesla, Judy Timbreza made some
14 racially racist comments to you; correct?
15 A. Yes. He called me a "porch monkey" the "N" word, and a
16 "mayate," ma'am.
17 Q. And Mr. Timbreza, do you know what his nationality is?
18 MR. ORGAN: Objection. Relevance, Your Honor.
19 THE COURT: Overruled.
20 THE WITNESS: No, I do not.
21 BY MS. KENNEDY:
22 Q. Do you know if he speaks languages other than English?
23 A. Spanish.
24 Q. I'm sorry?
25 A. Spanish.

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DIAZ - CROSS / KENNEDY

1 Q. And when he called you these words -- I'm sorry, I'm going
2 to use the words -- "porch monkey," was that in English or in
3 Spanish?
4 A. He called me that in Spanish, ma'am.
5 Q. And he used the term "mayate" to you as well; correct?
6 A. Yes, ma'am.
7 Q. And where did that take place?
8 A. The elevator.
9 Q. The elevator. While you two were both on the elevator?
10 A. Yes. He was on the elevator with me, ma'am.
11 Q. Okay. And you agree that there is no documentation from
12 you in an email, text message, about those comments by Judy
13 Timbreza; correct?
14 A. No, no email. I verbally stated that to Tom Kawasaki.
15 Q. Right. I understand that verbally and you told it to Tom
16 Kawasaki. And that was approximately July of 2015; correct?
17 A. Sounds about right, ma'am.
18 Q. And Tom Kawasaki at that time, was he a Tesla employee, to
19 your knowledge?
20 A. At that time I didn't know if Tom was a Tesla employee,
21 but I do believe Tom was part of the sustainability --
22 environment sustainability.
23 Q. And after you reported this to Tom, according to you, you
24 never saw Judy Timbreza again; correct?
25 A. Correct, ma'am.

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DIAZ - CROSS / KENNEDY

1 Q. And once you reported it to Tom and Judy Timbreza was
2 gone, were you at least satisfied with that response?
3 A. Yes, I was, ma'am.
4 Q. You also testified about a variety of other racial slurs,
5 which, I'm sorry, I'm going to have to use some of the
6 language.
7 But before I get into that, my question is: Did you ever
8 actually see anyone writing any graffiti in any of the
9 bathrooms that you said you saw?
10 A. No. I've never personally witnessed anybody writing it,
11 but I did see it.
12 Q. And do you have any idea if any Tesla employee did any of
13 the writing? Do you have any knowledge if it was a Tesla
14 employee at any time?
15 A. No, ma'am. As I stated, I have -- I didn't visually see
16 anybody doing it.
17 Q. All right. And if I understand correctly, you also
18 testified that you reported the use of the "N" word by
19 different individuals to Ed Romero at least three to seven
20 times; is that about right?
21 A. That's about right, ma'am.
22 Q. And you also told Mr. Romero, according to you, that Ramon
23 Martinez and Robert were calling you the "N" word; correct?
24 A. Yes, ma'am.
25 Q. And, again, you have nothing in writing about those

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DIAZ - CROSS / KENNEDY

1 complaints to Mr. Romero; correct?
2 A. You're right, ma'am.
3 Q. And given the fact that the Judy Timbreza incident had
4 been resolved, were you at least confident that if you reported
5 things, it was ongoing to be handled? Was that your
6 understanding?
7 A. When I had verbally told Tom Kawasaki, yes, he did handle
8 it. So I figured if I can verbally tell Ed Romero the same
9 thing, he would probably get the same results as Tom Kawasaki,
10 yes.
11 Q. And so, according to you, once you told the story --
12 strike that.
13 Once you had told Mr. Romero three to seven times that
14 this was being said to you and nothing was done, why not put
15 anything in writing to someone else, is my question.
16 A. I don't know. At that time I didn't have access to their
17 email. So, I mean, I don't know why I didn't do it.
18 Q. Well, you had a Gmail account; correct?
19 A. Yes, I have a Gmail account.
20 Q. And you had the ability to email Mr. Romero and text
21 message Mr. Romero from your phone; correct?
22 A. At some point Mr. Romero gave me his email and told me I
23 could write him and shoot an email to him. And he had gave me,
24 I think it was a paper with a few more email addresses on it.
25 Q. And you've also testified that Robert and Ramon Martinez

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1 get done, I don't have to like you to get this goal done.
2 Q. Okay. So in your opinion, you could still do your job
3 despite all these other racial slurs; correct?
4 A. Yes, ma'am.
5 Q. And you and still continued to want to work at that
6 assignment at Tesla despite all these racial slurs; correct?
7 A. Until at some point, yes, ma'am.
8 Q. Understood. And you got to that point after the drawing
9 from January of 2016, which we'll get to; is that correct?
10 A. Yes.
11 Q. Okay. If you also see in Paragraph 5 of Exhibit 205.
12 A. I've read it, ma'am.
13 Q. You understood that even once you're on your assignment,
14 if you're dissatisfied for any reason, to contact CitiStaff and
15 inform him or her of your assignment status. Do you see that?
16 A. Yes. I -- can I read it out for you, ma'am?
17 Q. I'm sorry. You can read it to yourself, yes.
18 Did you understand that, sir?
19 A. I understand. That's not how I read it, ma'am. I'm
20 sorry.
21 Q. No. That's fine.
22 All right. Let's get back to a couple other things. So
23 if I understand correctly, the individuals who you believe --
24 I'm sorry, strike that.
25 The people who you claim made racist comments to you are

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DIAZ - CROSS / KENNEDY

1 Judy Timbreza, Ramon Martinez, and Robert Hurtado; is that
2 correct?
3 A. Yes, ma'am.
4 Q. And given all the comments you talked about, Judy
5 Timbreza, Ramon Martinez, and Robert Hurtado, that was pretty
6 much the entire nine and a half months or so that you were
7 assigned to the Tesla location; correct?
8 A. Can you repeat that question one more time, please?
9 Q. Absolutely. The individuals who made these racial slurs
10 to you -- Judy Timbreza, Ramon Martinez, and Robert Hurtado --
11 they were the individuals, the only individuals, who made those
12 comments to you during your about nine-and-a-half-month
13 assignment at the Tesla facility; correct?
14 A. No. Them are not the only individuals. If you check my
15 testimony, I said it was eight to ten more people, you know.
16 Q. Right. But you have no idea who those people are;
17 correct?
18 A. No. Unless I seen a photo. I might recognize some of
19 them, I might not. I don't know, ma'am. I'm sorry.
20 Q. You don't know if -- you don't know anything about them.
21 Just eight to ten more people at some time during that time
22 period you were there; correct?
23 A. Yes, ma'am.
24 Q. And at any point in time did you ever go and try to point
25 out those people to anyone at the factory at the time it was

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DIAZ - CROSS / KENNEDY

1 happening?
2 A. Umm, at some point I do believe I pointed out a few of
3 them to Ed Romero, ma'am.
4 Q. And when you pointed them out, did you go you there and
5 try to ask what their name is or what their badge was or
6 anything like that?
7 A. No. I wouldn't have confronted them and asked them what
8 their badge was because -- or what their name was because that
9 could have led to another confrontation, ma'am. I'm sorry.
10 Q. Well, during the time that you're being harassed -- and I
11 understand your testimony -- and you see people are doing this
12 to you, and you testified in response to your attorney's
13 question that you wanted to get this out, did you try to do
14 anything to stop those individuals from doing that at the time?
15 A. No. At the time, no, ma'am. All I did was reported it to
16 Ed Romero and hopefully he could have stopped it.
17 Q. At any point in time did you ever -- strike that.
18 In October of 2015 you talk about an elevator incident
19 with Ramon Martinez.
20 A. Yes. He accosted me in the elevator. Yes, that's true.
21 Q. Right. And according to you, this started with
22 Mr. Martinez and it was unprovoked; correct?
23 A. Yes, it was unprovoked, ma'am.
24 Q. And during this time, you testified that Ramon Martinez
25 during this confrontation used the "N" word; correct?

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DIAZ - CROSS / KENNEDY

1 A. Yes. He -- he was yelling at me obscenities and then he
2 just stated that: "Ns" aren't shit. Excuse my language again,
3 folks.
4 Q. And as of the time of this incident, Mr. Martinez,
5 according to you, kept calling you the "N" word and telling you
6 to go back to Africa during this entire incident that was going
7 on; correct?
8 A. No, not during the entire incident that was going on. He
9 had did that over a period of time, ma'am.
10 Q. Okay. So at least for a period of time, as of the time
11 that you reported this incident in writing, according to you,
12 this has been going on for at least a month or so, at least;
13 correct?
14 A. I -- I have to check the email, but it had been going on
15 for a while. I don't know if -- it had been going on.
16 Q. And then when you got the opportunity, you documented your
17 complaint against Mr. Martinez; correct?
18 A. Yes. When I got the opportunity, I definitely documented
19 it because when he had been saying it first, I didn't have
20 proof; but when he said it in the elevator, I did really
21 believe that their surveillance system would have captured
22 that, and then there would have been a real investigation that
23 would have went on, and then they would have came and talked to
24 me, and then I could have told them. And then they would have
25 seen the video and they would have seen the audio or heard the

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DIAZ - CROSS / KENNEDY

1 audio of what was going on in the elevator. So, yes.
2 Q. So at the time you were there, you told Mr. Martinez
3 "There's surveillance and basically you're caught," so to
4 speak; correct?
5 A. Yes, ma'am.
6 Q. And then after that incident, you then took the time to go
7 write an email about that incident; correct?
8 A. Yes. I wrote an email, ma'am.
9 MS. KENNEDY: Stephanie, can we go to Exhibit 235?
10 Your Honor, which has already been admitted.
11 This is an October 17th, 2015, email.
12 (Document displayed.)
13 BY MS. KENNEDY
14 Q. Take a minute to read that, Mr. Diaz.
15 A. I'm familiar with the email, ma'am.
16 Q. I'm sorry?
17 A. I'm familiar with the email.
18 Q. Thank you.
19 When you wrote this email, it appears to be, like, at
20 6:08 a.m. Do you see that?
21 A. Yes, ma'am. I had to write the email. Like I said
22 earlier, some days I was overworked and I had -- I had other
23 assignments to do, and I couldn't just sit there and write the
24 email exactly when it happened.
25 So what I had to do is I had to write the email in pieces

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DIAZ - CROSS / KENNEDY

1 as I was doing my job, and I had a little time to get it taken
2 care of.
3 Q. Absolutely. My question just is: Do you recall if you
4 wrote this email while you were still on duty, like still
5 working, or did you go home or go into your car and write it?
6 That was going to be my question.
7 A. No. I -- I was still inside the factory.
8 Q. And did you take your time to write this email to make
9 sure you conveyed to Ed Romero and Tom Kawasaki everything you
10 wanted to convey to them as to what this incident was about?
11 A. Umm, what I was doing, I was writing the email to -- to
12 convey to them that an incident had occurred and could they
13 please check the surveillance system to find out what had
14 exactly happened.
15 Because, like I said before, you know, what -- I -- I can
16 sit here and I can say a few things. I can say: Hey, he's
17 been doing this and he's been doing that.
18 But, you know, as being a black man, a lot of them think
19 I'm pulling the race card. So instead of me doing that, you
20 know, I figured I had definitive proof. Please check the
21 surveillance system.
22 Q. Mr. Diaz, you would agree the definitive proof would be if
23 you had written in the "N" word or other things as to what you
24 claim Mr. Ramon Martinez said to you; correct?
25 MR. ORGAN: Objection. Argumentative.

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DIAZ - CROSS / KENNEDY

1 THE COURT: Yes, sustained.
2 MS. KENNEDY: I'll rephrase.
3 BY MS. KENNEDY
4 Q. The surveillance, the cameras, there's is no audio on the
5 surveillance, is there?
6 A. I don't know. I believe there was audio. Every time I
7 done saw a camera, mostly it has audio.
8 Q. But you had no idea there was audio in the elevator,
9 according to you; correct? You saw there are cameras; correct?
10 A. Yes, I did see there was cameras.
11 Q. And you assumed there was audio; correct?
12 A. Yes, I assumed there was audio.
13 Q. But you didn't know; correct?
14 A. No. I didn't know 100 percent, but I assumed. So at that
15 particular time, yes, I was 100 percent thinking that it was
16 audio recording going along with the video recording.
17 Q. And according to you -- as of October 17th, 2015,
18 according to you, you have been complaining verbally about all
19 these racial slurs and nothing had been done; correct?
20 A. Yes, ma'am.
21 Q. You had an opportunity here on October 17th, 2015 to give
22 a written complaint about all these horrible racial slurs, and
23 you would agree you chose not to put those words in this email,
24 correct?
25 A. Again, ma'am, I'm going to say with the audio and video,

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DIAZ - CROSS / KENNEDY

1 all they had to do is just check it.
2 Q. I understand, but that wasn't my question, sir.
3 My question was: You chose, for whatever reason, not to
4 put any of the racial slurs that you are suing for in this case
5 in this email; is that correct?
6 A. Yes, I did not put it inside the email, ma'am.
7 Q. And that was your decision, correct, at the time?
8 A. I wrote the email so, yes, it was my decision, ma'am.
9 Q. And when you complained again about anyone else, you also
10 chose not to put any of these horrible racial slurs that you're
11 suing for in this lawsuit in any email; correct?
12 A. No, ma'am. I didn't put the word in the email. Like I
13 stated before, you know, a lot of people don't want to put that
14 in the email. If you notice, my supervisor, Tom Kawasaki, he
15 didn't even put it in his email.
16 Q. Well, I understand Tom Kawasaki, but my question is not
17 about Mr. Kawasaki. My question is about you, Mr. Diaz.
18 My question is: You chose not to put these words in
19 writing; correct?
20 A. Yes, ma'am, I did not put it in the email.
21 Q. And so as of October 17th, 2015, it's your understanding
22 that your son Demetric was still working at the facility;
23 correct? At the factory?
24 A. Can you give me the date one more time, please?
25 Q. Certainly. October 17th, 2015, was it your understanding

Exhibit I

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ORRICK

DEMETRIC DI-AZ, OWEN DIAZ AND
LAMAR PATTERSON)
)
)
 Plaintiffs,)
)
 vs.) No. C 17-6748 WHO
)
 TESLA, INC., dba TESLA MOTORS,)
 INC., CITISTAFF SOLUTIONS, INC.,)
 WEST VALLEY STAFFING GROUP,)
 CHARTWELL STAFFING SERVICES, INC.,)
 and DOES 1-50, inclusive,)
)
 Defendants.) San Francisco, California
) Thursday
) September 30, 2021
) 8:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

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APPEARANCES: (CONTINUED)

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- Tesla, Inc.

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- Tesla, Inc.

VALERIE CAPERS WORKMAN
- Tesla, Inc.

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1 Thursday - September 30, 2021 8:01 a.m.
2 P R O C E E D I N G S
3 ---000---
4 (Proceedings were heard out of presence of the jury:)
5 THE CLERK: Please come to order.
6 THE COURT: Please be seated.
7 I understand that there are problems on the bridge and not
8 only is it impacting Mr. Organ, but also at least one of the
9 jurors. So it will resolve when it resolves.
10 So there were just a couple of things -- two things on my
11 mind this morning.
12 One is I will give the proposed instruction on the persons
13 most knowledgeable as it was written last night and what was
14 just proposed and previously proposed and I said I was going to
15 read it.
16 And then the other issue was Mr. Organ yesterday was about
17 to read some discovery. Do we know what that is? And --
18 MR. ALEXANDER: Yes, Your Honor. I believe that we
19 submitted that documentation to you last night. My
20 understanding is that it was going to be submitted so that
21 everyone would know what was going to be read.
22 THE COURT: Okay. I didn't see it this morning.
23 Ms. Kennedy, do you know what it is?
24 MS. KENNEDY: I do not, Your Honor.
25 MR. ALEXANDER: We should be able to provide printed

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1 copies of that.
2 THE COURT: Okay. That would be great. Why don't you
3 provide it to Ms. Kennedy so she knows what it is that you're
4 talking about. And if there's no problem, then we can proceed;
5 and if there's a problem, I'd like to know about it.
6 (Whereupon document was tendered to the Court and
7 counsel.)
8 (Brief pause.)
9 THE COURT: Mr. Alexander, while we're waiting, who
10 are the witnesses today?
11 MR. ALEXANDER: As I understand it, the witnesses are
12 we're going to complete Mr. Diaz. Then we'll have La'Drea
13 Diaz. Then we'll have Dr. Anthony Reading. Then we'll have
14 Amy Oppenheimer.
15 THE COURT: And will that complete your case?
16 MR. ALEXANDER: No. I believe that we have -- I
17 believe that we have Lamar Patterson and the Erin Marconi
18 video. And with regard to Mr. Patterson, it's unclear where he
19 will be in the lineup.
20 THE COURT: Okay.
21 MR. ALEXANDER: And then there's the Heisen transcript
22 as well?
23 THE COURT: The Heisen?
24 MR. ALEXANDER: Yes.
25 THE COURT: Okay. All right.

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OPPENHEIMER - DIRECT / ORGAN

1 them. If they're not enforced, they're pretty meaningless.
2 Two, that you train people about them. Both the employees
3 and especially supervisors and managers get additional
4 training. There's a mandatory minimum under state law, but
5 additional training. Especially if there are issues in a
6 specific workplace, it's very helpful and important.
7 Three, giving a consistent message. In this case focusing
8 on racial harassment, that racial harassment will not be
9 tolerated, and then making sure that the work environment is in
10 accord with that. Because, again, saying it is not the same as
11 enforcing it. And so if there are open and obvious things in
12 the work environment, they should be addressed immediately to
13 send a very clear, consistent message.
14 Five is an immediate response. If there is either a
15 complaint or there is notice of harassment, some -- it used to
16 be years ago, I don't think so much employees think that now,
17 that employers would say: Well, I didn't get a complaint, so I
18 didn't have to do anything. But if you see something, if
19 you're aware of it, even an anonymous complaint or the fact
20 that a supervisor hears a racial epithet, that's all things
21 that should be responded to immediately. You don't wait for a
22 complaint and you certainly don't wait for something in writing
23 or official.
24 Six, if there is something offensive, it's removed right
25 away and then the policy is enforced by letting people know.

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OPPENHEIMER - DIRECT / ORGAN

1 Sending a memo, giving an announcement, having a meeting: This
2 was observed in the workplace. This is inconsistent with our
3 policies. It won't be tolerated. There will be a consequence.
4 And then you, of course, have to follow through on the
5 consequence.
6 And, seven, that there are immediate adequate
7 investigations of complaints or any notice of harassment.
8 Eight, that there is progressive and meaningful
9 discipline. So you might start with something not as
10 significant. Of course, it depends on what the -- what the
11 harassment is. As with anything in employment, it depends on
12 the seriousness, but it should be progressive so that it's more
13 serious if it's repeated.
14 And, lastly, that there's followup; that if somebody
15 complains about an issue, that after an investigation they're
16 told the results. And then there's continued followup to make
17 sure that whatever it was they complained about has stopped and
18 that they can be comfortable continuing to work there.
19 Q. Okay. And what is the standard of care relative
20 investigations?
21 A. Investigations should be -- and I think I have another
22 slide to help prompt me. And I know -- I don't have control of
23 the slides, is my understanding, so somebody out there, if you
24 do.
25 Thank you.

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OPPENHEIMER - DIRECT / ORGAN

1 Oh, okay. I guess I was going to go to something else.
2 Q. Yeah.
3 A. Maybe it's the next one.
4 (Document displayed.)
5 A. Okay. Investigations should be initiated -- and I talked
6 about that -- with any notice.
7 I'm not sure at this point where the slide on the standard
8 for investigations is so I can talk off-the-cuff.
9 Q. Sure.
10 A. Investigations should be prompt, thorough, and fair. When
11 I evaluate an investigation, I look at was the person who did
12 it experienced, not -- didn't have a bias, and appropriate
13 therefore to do that investigation, number one.
14 Number two, was it reasonably thorough? Were the people
15 who should be interviewed interviewed? Were the interviews
16 either done in person or on video? So you can develop some
17 rapport, see that person. Were documents gathered?
18 And then, lastly, did the person who did the investigation
19 come to a reasoned conclusion based on the evidence collected
20 and explain that conclusion so that it's not just arbitrary;
21 that it was consistent with whatever evidence that they
22 gathered?
23 Q. I notice on this slide on Item 4 there's a -- you have
24 something here: Was there appropriate remedial and followup
25 action? What is that referring to?

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OPPENHEIMER - DIRECT / ORGAN

1 A. So that's an after-investigation issue. When I'm
2 evaluating investigations done by other people, I look to the
3 first three prongs for the investigation itself, and then I
4 also look to what happened when it was done.
5 Because there are often problems with retaliation after an
6 investigation. And if there isn't appropriate remedial action
7 and followup, too often there could be retaliation. So it's a
8 very important element in the prevention and response plan.
9 Q. And how did Tesla do when you analyzed the things that you
10 saw at Tesla versus the standard of care, as you call it?
11 I think this is Slide 3.
12 (Document displayed.)
13 A. Not so well. There are policies, but I did not see
14 evidence that they are routinely and strongly enforced. In
15 fact, there was evidence that the "N" word is used in the
16 workplace, the full word, whether ending in an "E-R" or an "A,"
17 neither of which should be permitted. And that supervisors
18 were aware of it, that action wasn't taken.
19 And so the policies, you know, don't mean much if they are
20 not enforced. In fact, sometimes it -- it undermines and sends
21 the opposite message to have a policy that says one thing and
22 then everybody doing something else.
23 I didn't see evidence that people were trained adequately.
24 A number of the witnesses testified that they didn't have
25 training, both supervisors and employees. And some of the HR

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1 MS. KENNEDY: Oh, you'll have them this afternoon.
2 THE COURT: Okay. Sooner rather than later --
3 MS. KENNEDY: Yes.
4 THE COURT: -- because you'll want to know what my
5 rulings are.
6 MR. ORGAN: Well, we will be having a conference still
7 tomorrow?
8 THE COURT: Yes.
9 MR. ORGAN: So we will be doing closings on Monday?
10 THE COURT: Correct. And we will do the Final Jury
11 Instructions right after the evidence is finished on Friday.
12 MR. ORGAN: I think you got my comments at least last
13 night I believe.
14 THE COURT: On the Jury Instructions, yes.
15 MR. ORGAN: Yes, Your Honor.
16 Okay. And then we also -- we might have a little bit of
17 rebuttal, but it will be maybe ten minutes at the most.
18 THE COURT: Okay. Well, we'll see where we are.
19 MR. ORGAN: Yes.
20 THE COURT: Okay.
21 MR. ORGAN: Thank you, Your Honor.
22 MS. KENNEDY: Thank you, Your Honor.
23 (Whereupon at 1:13 p.m. further proceedings
24 were adjourned until Friday, October 1, 2021
25 at 8:00 a.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas, CSR 11916, CRR, RMR, RPR
Thursday, September 30, 2021

>

Exhibit J

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YUSUF MOHAMED, ESQ.
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VALERIE CAPERS WORKMAN
- Tesla, Inc.

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1 before the verdict, and then they would be identified in that
2 way and you could refer to them in that way.

3 MR. ORGAN: I see. So they're not actually received
4 in evidence. They're just --

5 THE COURT: They're not going to go back to the jury,
6 but they'll just be there.

7 MR. ORGAN: Okay. Thanks.

8 THE COURT: I think that's the way to do it.

9 MR. ORGAN: Okay. There's one other. We still have
10 McGinn to do. So we'll redo the two that we filed and submit
11 them to the Court as exhibits?

12 THE COURT: All you have to do is give them an exhibit
13 number.

14 MR. ORGAN: Oh, okay. Okay.

15 THE COURT: And that will be fine. And the same thing
16 with McGinn.

17 MR. ORGAN: Thank you, Your Honor.

18 THE COURT: And then there's the Demetric Di-az
19 rebuttal. Were there any objections to that?

20 MS. KENNEDY: No. Is it going to be rebuttal or is it
21 just going to be a supplemental? Because --

22 THE COURT: It sounded -- it is rebuttal. I don't
23 care when it goes in --

24 MS. KENNEDY: Okay. That's fine.

25 THE COURT: -- I think. So the idea would be that it

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DELAGRANDE - DIRECT / JENG

1 BY MS. JENG
2 Q. Did you become aware of -- sorry.
3 How did you become aware of the incident in the elevator
4 with Mr. Diaz and your leads?
5 A. My leads came and told me there was an issue about --
6 MR. ORGAN: Hearsay.
7 THE COURT: No. Overruled.
8 You can continue.
9 THE WITNESS: Okay.
10 My leads came and told me there was an issue with Owen
11 when they were asking him to take a gearheart downstairs. They
12 told me that they were --
13 MR. ORGAN: Objection. Now hearsay.
14 THE COURT: Okay. So, ladies and gentlemen, hearsay
15 is an out-of-court statement made by somebody else. It doesn't
16 have the same ring of authenticity as other things.
17 So the statements that Ms. DelaGrande is now talking about
18 is not admitted for the truth of what actually happened, but
19 they are going to be admitted to allow her to explain why she
20 did what she ended up doing.
21 So with that understanding, please proceed.
22 THE WITNESS: Okay.
23 The leads came and told me they were unable to speak to
24 Owen; that he only wanted to talk to them via text or email --
25 I'm sorry, this one was email -- and they don't have his

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DELAGRANDE - DIRECT / JENG

1 personal email to do that.
2 And at the time we really needed to be able to talk to him
3 to tell him exactly what product was supposed to go downstairs
4 and what product was supposed to come upstairs.
5 BY MS. JENG
6 Q. Who were the leads that made you aware of this?
7 A. Robert Hurtado and Devin Williams.
8 Q. And did you speak with Mr. Diaz before or after you sent
9 this email to Mr. Romero?
10 A. Yes. It was before I spoke to Owen and he told me that my
11 leads were threatening him because they say they were going to
12 contact Mr. Romero. And so I spoke to -- I sent this email
13 based on the fact that I needed to make him aware of the
14 issues.
15 Q. If you look on Page 5, you see that Mr. -- I'm sorry.
16 In the middle of the page you email Mr. Romero again and
17 say that you prefer that he is placed somewhere else. When can
18 we make this happen?
19 What were you asking Mr. Romero to do?
20 A. I was asking Mr. Romero to replace Owen at the elevator.
21 Q. What happened between your initial email and this email to
22 make you ask Mr. Romero to replace Mr. Diaz?
23 A. We absolutely had to be able to communicate with the
24 elevator team, and Owen had made it clear that he did not want
25 my team speaking to him. And so because of that, I wasn't able

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DELAGRANDE - DIRECT / JENG

1 to have him at the elevator because we were -- we were
2 potentially going to cause the line to go down.
3 Q. Did either Hugo Gallegos, Robert Hurtado, or Devin
4 Williams ever make you aware that any racial slurs were said
5 during this incident?
6 A. No.
7 MR. ORGAN: Objection. Leading, Your Honor.
8 THE COURT: No. Overruled.
9 THE WITNESS: No. Absolutely not.
10 BY MS. JENG
11 Q. Okay. And what race or ethnicity do you believe
12 Mr. Gallegos to be?
13 A. He is Hispanic.
14 Q. What about Devin Williams?
15 A. He's African-American.
16 Q. Okay. And neither of them mentioned any racial epithets
17 that were said?
18 A. Oh, absolutely not.
19 Q. Was it your understanding that they were present during
20 the incident?
21 A. Yes. They were both there.
22 Q. And if either of them had reported any racial slurs that
23 were said, would you have reported it?
24 A. Absolutely. That was not tolerated in any area anywhere
25 at Tesla.

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DELAGRANDE - CROSS / ORGAN

1 Q. How often did you interact with Mr. Hurtado at work?
2 A. Every day. Constantly.
3 Q. Have you ever heard him say the "N" word at work?
4 A. No. That's not even a part of his vocabulary. He doesn't
5 speak like that.
6 Q. What do you mean by he doesn't speak like that?
7 A. He would never say something like that. That's just not
8 something that -- that's not him to talk like that. He
9 doesn't -- he would never use that terminology.
10 Q. And how many people worked on your team with Mr. Hurtado,
11 Devin Williams, and Hugo Gallegos?
12 A. I believe we had about 20 people.
13 Q. And did anybody on those teams complain to you about
14 Mr. Hurtado saying any sort of racial sure?
15 A. Never.
16 MS. JENG: No further questions?
17 THE COURT: All right.
18 Mr. Organ.
19 CROSS-EXAMINATION
20 BY MR. ORGAN
21 Q. Did you work with a Tom Kawasaki?
22 A. I don't remember Tom.
23 Q. On the elevators when you first were there in the fall of
24 2015?
25 A. I don't remember his name, no.

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DELAGRANDE - CROSS / ORGAN

1 supervisor.
2 Q. Okay.
3 MR. ORGAN: Your Honor, I would move Exhibit 298 into
4 evidence.
5 THE COURT: Any objection?
6 MS. JENG: No objections.
7 THE COURT: It's admitted.
8 (Trial Exhibit 298 received in evidence)
9 BY MR. ORGAN
10 Q. Okay. Let's go through this real quick.
11 MR. ORGAN: May we show this to the jury, Your Honor?
12 THE COURT: You may.
13 MR. ORGAN: Okay.
14 (Document displayed.)
15 BY MR. ORGAN
16 Q. So at the top you say you're asking to have Owen replaced;
17 right?
18 A. Yes.
19 Q. And that's because you had the power to ask Ed Romero to
20 replace people on the elevators; right?
21 A. Yes.
22 Q. And Ed was Owen's supervisor at that time; right?
23 A. Yes.
24 Q. Okay. And, now, you mentioned down here -- let's go down
25 to the middle bit here at the 1:25 a.m. - and -- oh. If I have

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DELAGRANDE - CROSS / ORGAN

1 you're saying here (as read):
2 "Tonight my lead approached him to talk to him
3 and said for my associates to only talk to him if it's
4 related to business."
5 As of February 26 --
6 A. At 1:25 a.m. The email that I sent to my manager and to
7 my coworker was at 2:15 a.m.
8 Q. As of February 26 at 1:25 a.m., Mr. Diaz was just asking
9 your leads to talk to him about business; right?
10 A. Yes. And then after I went and spoke to Owen, he claimed
11 that because my leads went and told him that they were going to
12 go speak to his manager, that he only wanted text or email. So
13 he told my team -- my leads that it was just email, and then he
14 told me it was text and email.
15 Q. Owen is now -- let's go to the second paragraph.
16 A. Yes.
17 Q. "Owen is now telling me..." So he talked to you?
18 A. He did speak to me, yes.
19 Q. Where was that conversation?
20 A. Over at my desk.
21 Q. Okay. He told you that your associates had threatened
22 him; right?
23 A. Yes.
24 Q. And didn't you have to investigate that?
25 A. Yes.

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DELAGRANDE - CROSS / ORGAN

1 it right, you had just switched positions; is that correct?
2 A. Yes.
3 Q. So prior to this February 26 time period, you'd been
4 working days; right?
5 A. No. I was working downstairs in general assembly.
6 Q. Oh, down in general assembly. Okay.
7 So you had just switched to that particular position then;
8 is that what happened?
9 A. Yes.
10 Q. Okay. And then you say here (as read):
11 "Tonight my lead approached me."
12 Do you see that?
13 A. Yes.
14 Q. And you mentioned earlier that Mr. Diaz would only talk to
15 your leads by text or email. I think you switched it to email;
16 right? That's what you said?
17 A. That particular night. That's why my lead approached me.
18 Prior to that, they were speaking. They were talking to them.
19 Q. Isn't it true, ma'am, that what Mr. Diaz said was that he
20 would only talk to your leads about issues related to business;
21 right?
22 A. Originally, yes, he did.
23 Q. Well, originally as of February 26 when you said --
24 A. Yes.
25 Q. -- that you wanted Mr. Diaz replaced; right? That's what

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1 Q. Okay. And how did you go about investigating that?
2 A. By speaking to Owen and seeing if what my leads said was
3 true, and that's why we were speaking.
4 The second part of the email was me talking to Owen about
5 what my leads had said, and he confirmed that he didn't want to
6 speak to them unless it was text or email.
7 Q. About business?
8 A. About business, yes.
9 Q. Right. Now -- and that was unprofessional, right, for him
10 to do that?
11 A. Yes, because we needed to speak to him. We didn't work
12 through emails and text. We had to be able to openly
13 communicate with each other.
14 Q. Isn't it true, ma'am, the height of professionalism is to
15 only ask people to talk to you about business?
16 A. Yes.
17 Q. Okay. So wasn't Mr. Diaz only showing the height of
18 professionalism there by saying: Please just talk to me about
19 business?
20 A. He didn't want them to speak to him at all. He wanted
21 them to ask -- all the requests he wanted to go through text or
22 email, and that's what he let us know.
23 Q. In your email you say -- you don't say in your email he
24 wouldn't talk to him. You say (as read):
25 "Only talk to him if it's related to business."

Exhibit K

Debra L. Pas, CRR
Official Reporter - U.S. District Court
(415) 431-1477

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CLOSING ARGUMENT / KENNEDY

1 much.

CLOSING ARGUMENT

2
3 MS. KENNEDY: Good morning, ladies and gentlemen. I
4 want to thank you first for your service. We know this is a
5 hardship. And as you recall, the last time I got to actually
6 speak directly to you was a week ago today when I got to give
7 you my opening statement.

8 This is now my only opportunity to tell you what we think
9 the evidence is and the evidence as to why you should not find
10 Tesla responsible or liable in this matter.

11 I want to thank you, the jurors, the Court, the Court
12 staff, and on behalf of my litigation team and my client I want
13 to thank you for your time, your consideration, and your
14 attentiveness here.

15 This is a difficult thing to do, to sacrifice your jobs,
16 your time away from your family and your friends, so we thank
17 you for.

18 All of us here in the courtroom, this is part of our job.
19 This is what we do. This is not your job, but it is part of
20 your civic responsibility. We want to thank you for it.

21 So why are we here? This is a case by Owen Diaz.
22 Mr. Diaz and only Mr. Diaz.

23 On the verdict form, as you have been shown by the Court,
24 you're being asked questions about Mr. Diaz, not about anyone
25 else. You're asked questions about Tesla and no one else. But

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CLOSING ARGUMENT / KENNEDY

1 in this particular case the evidence is going to show that
2 Tesla is not responsible and not liable for all of the
3 allegations made by Mr. Diaz in this particular case.

4 So let's talk about why we are here. You're going to be
5 asked questions on the verdict form, which is basically your
6 guide and your decision-making based on the factual
7 determinations and the law you, the nine of you, are going to
8 need to decide, collectively all nine you, to answer questions
9 in this case on the verdict form.

10 The first issue that we talked about at the beginning of
11 this trial, that Owen Diaz was not a Tesla employee, we'll talk
12 about that. We'll talk about the issues concerning joint
13 employer, contractual relationships. But, in fact, Mr. Diaz
14 was never a Tesla employee.

15 Second, no evidence that a Tesla employee harassed Owen
16 Diaz during the time period that he was there, and he harassed
17 Mr. Diaz as defined by the law. And the law is what guides you
18 in this particular case. Not your personal feelings. Not what
19 you think should be done. Not what you think should, "I
20 probably do the right thing because Tesla is a huge company and
21 maybe if you just give him a little bit of money, that would be
22 okay." You're guided by the facts, you're guided by the law,
23 and you're guided by the verdict form.

24 Mr. Alexander and I, we are lawyers. We are not part of
25 the factual determination here. Our jobs are to advocate for

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CLOSING ARGUMENT / KENNEDY

1 our clients, to tell you what the law is as described by the
2 Court and tell you why under the law the facts support our
3 clients. But you are the determination -- the determiners of
4 the facts in this case. The facts come from that chair and
5 that chair only.

6 So based on the facts of the case, not your emotions, not
7 what you think should be the right result, but the facts; and
8 the facts are in this case that no Tesla employee harassed
9 Mr. Diaz as "harassment" is defined in the law during his nine
10 and a half months that he was at the Tesla factory.

11 It is undisputed that every time Mr. Diaz complained, he
12 took -- it was addressed, discipline was imposed. And, in
13 fact, Tesla or Chartwell or West Valley or CitiStaff, all those
14 agencies took responsibility and Tesla took responsibility for
15 each and every one of those complaints.

16 We talked about Judy Timbreza, we talked about Rothaj
17 Foster, and we talked about Ramon Martinez. In every single
18 incident the matter was handled. The matter was resolved.
19 Discipline was imposed. And that conduct did not occur again.
20 I will show you the documents to that effect.

21 And, more importantly, one of the things you're going to
22 look at in this case, you're going to look at the totality of
23 the facts, the totality of the allegations, and Mr. Diaz
24 telling you this story.

25 Mr. Diaz was at the Tesla factory for about nine and a

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CLOSING ARGUMENT / KENNEDY

1 half months. He was assigned there by CitiStaff. His
2 testimony is that, according to him, every single day, and
3 according to Mr. Alexander, every single day he was called the
4 "N" word. Every single day he was the victim of harassment.
5 Every single day it was a horror to work there.

6 Every time he complained, he had the opportunity to
7 complain in writing. He didn't put anything in writing.

8 At the end of this, I'm going to tell you that Mr. Diaz's
9 story simply doesn't make sense. It's not to disparage
10 Mr. Diaz, but to talk about the facts at the time. And we need
11 to judge Mr. Diaz at the time this was going on. You have to
12 judge Tesla at the time this was going on. Not after the fact
13 when a bunch of lawyers get involved, including Tesla lawyers,
14 including Mr. Organ and Mr. Alexander.

15 You have to judge the facts as to what happened at the
16 factory at the time and make your determination using your
17 common sense, judgment, and knowing just how things work at
18 organizations.

19 Now, we spent a lot of time this week talking about
20 Mr. Diaz's allegations about a variety of people, but namely it
21 comes down to Judy Timbreza, Ramon Martinez, and Robert
22 Hurtado.

23 These are all of the allegations, the name calling, the
24 racial slurs that Mr. Diaz is in this court seeking to be paid
25 for. These are the words. These are horrible words. I'm not

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CLOSING ARGUMENT / KENNEDY

1 happened again. That's about taking responsibility.
2 And what we do know is there's lots of emails. You can
3 imagine in this case there were thousands of emails on all
4 kinds of issues, and the ones that you saw in this case are the
5 ones that you base your decision on.

6 And in this particular case when the complaint was made
7 and it went to Ed Romero, all the emails talk about racially
8 offensive remarks. Absolutely, 100 percent correct. We do not
9 dispute that. But the question we're being judged on is: Once
10 that complaint was made, what was done? And did it stop and
11 did it ever happen again? And, in fact, in this case it's
12 undisputed that that's what happened.

13 And, in fact, when I asked Mr. Diaz about that, his
14 response is that he was satisfied with this response. And, in
15 fact, there was no other contact. That's what taking
16 responsibility is about, and that is what happened in this
17 case. And Mr. Timbreza is not a Tesla employee.

18 So at least as to that incident, nothing is there. As to
19 that incident, there is -- it's clear that they took action to
20 prevent harassment, and it stopped and it ended for Mr. Diaz.

21 Mr. Diaz was believed. And if you're going to hold Tesla
22 responsible for this one, Tesla believed Mr. Diaz. Tesla made
23 sure, if you're going to believe Tesla is responsible, that
24 Mr. Timbreza was out of the workplace. This is the way it was
25 handled in July of 2015.

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CLOSING ARGUMENT / KENNEDY

1 According to Mr. Diaz though, he's still being called the
2 "N" word all the time. He's still being called, and there is
3 no evidence of that.

4 Let's go to the Rothaj Foster incident, which is in
5 November of 2015. And this is the incident. It's a complaint
6 by Mr. Diaz, absolutely. It's a complaint about aggressive
7 behavior, a threat, whatever you want to say it was. And if
8 Tesla is going to be held responsible, again, took
9 responsibility, believed Mr. Diaz. And Mr. Foster, who was
10 investigated, Mr. Foster was walked off. Never saw Mr. Foster
11 again.

12 And that there was no "N" word here. Mr. Alexander and
13 Mr. Organ said: Oh, this wasn't about the "N" word. Fair
14 enough, it wasn't. Absolutely. But the point is Mr. Diaz is
15 complaining again, and there's nothing in writing about all
16 this horrible sort of environment he's talking about.

17 And if you recall from the opening statement,
18 Mr. Alexander talked about threats and -- threats and violence
19 and that sort of thing. This is the threat, one of the
20 threats, according to Mr. Alexander, and there's nothing there
21 about the "N" word. That's what this is about. That's why we
22 had that in the opening statement. There is nothing in here
23 from Mr. Diaz about any type racial comments, et cetera.

24 What he's suing for are the racial comments, and that's
25 not here either. It was investigated, immediately handled,

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CLOSING ARGUMENT / KENNEDY

1 Foster was terminated. That's taking responsibility. That's
2 doing the right thing. That's believing Mr. Diaz.

3 Now, we get to the Ramon Martinez elevator incident on
4 October 17, 2015. This is the incident that we've spent a lot
5 of time talking about. And this is the incident that,
6 according to Mr. Diaz, was the, quote, "prior bad act" by
7 Mr. Martinez before we get to the cartoon incident in January
8 of 2016.

9 This is the incident where, according to Mr. Diaz, there
10 is an altercation at the elevator and words are exchanged. And
11 according to Mr. Diaz, this is when Ramon Martinez, again, his
12 nemesis since the beginning of his -- start of his assignment,
13 has been calling him the "N" word. According to Mr. Diaz's
14 testimony, more than 30 times.

15 Mr. Diaz started at the Tesla facility in June. We're in
16 October. This is practically every single day. They didn't
17 work together every day. But every day, if you're going to
18 believe Mr. Diaz, this was being called him every single day.

19 What we do know is on this day, October 17, 2015, Ramon
20 Martinez and Owen Diaz complained about each other.
21 Undisputed. They also talked about this incident in the
22 elevator.

23 It's your decision, your determination as to who was
24 telling the truth: All, some, or part. But we do know there
25 was an interaction between them. They both complained. And we

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CLOSING ARGUMENT / KENNEDY

1 do know when Mr. Diaz had the choice to complain and describe
2 what happened. He chose not to put any racial slurs in his
3 complaints. He chose not to talk about the prior interactions
4 he supposedly had with Mr. Martinez. He chose not to say: Oh,
5 by the way, he's been saying these things to me all of the
6 time.

7 What they did -- what he did decide to do is talk about
8 what occurred there. And he did talk about Mr. Martinez
9 yelling at him. Absolutely. He did complain about this, hey,
10 saying you have a problem with me. Why are you telling him who
11 his supervisor is? And all of this.

12 He also said that there was another witness there, Rothaj
13 Foster, who, again, about a month later was let go, who is
14 supporting him. Where is Rothaj Foster? Another witness. No
15 statements from Rothaj Foster. Mr. Diaz didn't ask Mr. Foster
16 to write a statement to this one like he did with Lamar
17 Patterson.

18 But what we do know, what the facts are in this case,
19 there was an interaction. There was a yelling match, whatever
20 you want to call it. There was an incident between
21 Mr. Martinez and Mr. Diaz on October 17, 2015. And what we do
22 know is that when Mr. Diaz had the opportunity to say whatever
23 he wanted about Mr. Martinez, he chose not to say any of the
24 words that he's suing for here today. That's what we do know.

25 You have to judge Mr. Diaz at the time as to whether or

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PROCEEDINGS

1 moment, because I want to come in to thank you personally. But

2 at this point the trial is adjourned.

3 (Jury exits the courtroom at 4:43 p.m.)

4 THE COURT: All right. And if the plaintiff will

5 prepare the judgment and share it with the defense and then

6 submit it, that would be great.

7 MR. ALEXANDER: Thank you.

8 MS. KENNEDY: Yes, Your Honor.

9 MS. NUNLEY: Yes, Your Honor.

10 THE COURT: Thank you.

11 (Proceedings adjourned.)

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I N D E X

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas, CSR 11916, CRR, RMR, RPR
Monday, October 4, 2021

Debra L. Pas, CRR
Official Reporter - U.S. District Court
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Exhibit L

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DEMETRIC DI-AZ and OWEN DIAZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 138

CASE NO. 3:17-CV-06748-WHO

DATE ENTERED

BY

DEPUTY CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**DESIGNATION OF TESTIMONY
PRESENTED BY VIDEO OF ERIN
MARCONI**

Trial Date: September 24, 2021
Complaint filed: October 16, 2017

To ensure a complete record, Plaintiff Owen Diaz provides the following deposition testimony from Erin Marconi which was presented by video to the jury on September 30, 2021.

Marconi, Erin 10/21/19, Volume 1

#	Lines	Deposition Excerpt
1.	13:17-14:05	<p>17 What did you do after you left Volt as a 18 program manager? 19 A I went to Tesla as an HR business partner. 20 Q So that would be approximately 2013? 21 A Correct. 22 Q How long were you an HR business partner at 23 Tesla? 24 A Until January 2017. 25 Q And what was your job title after you – after 1 January 2017? 2 A I took a time off work. I had been a 3 caregiver for my mother. 4 Q And have you worked at Tesla since that time? 5 A No.</p>
2.	14:09-14:21	<p>9 Q Okay. What were the job duties of an HR 10 business partner in your role? 11 A Strategic partner with the business management 12 teams from work planning, succession planning. Time to 13 time would help out if recruiting was needed, but that 14 wasn't primary. 15 A lot of HR generalist at the beginning. That 16 went away as we grew. Employee relations, 17 investigations, performance management. Employee 18 engagement. 19 Q It sounds like -- 20 A Probably about covers it. A little bit of 21 everything.</p>
3.	15:03-15:05	<p>3 Q Okay. So investigations were part of your job 4 as an HR business partner; is that right? 5 A Correct.</p>
4.	27:12-27:15	<p>12 Q But the HR business partner team that you were 13 part of was in charge of handling, among other things, 14 complaints about discrimination or harassment; right? 15 A Correct.</p>
5.	33:17-33:20	<p>17 Q Okay. But it's fair to say that you at least 18 understood what Tesla's policies were in terms of 19 anti-discrimination and anti-harassment; right? 20 A Correct</p>
6.	35:02-35:07	<p>2 Q So with that understanding of the definition 3 of n- -- of the n-word, is it your understanding that 4 Tesla's anti-harassment and anti-discrimination 5 zero-tolerance policies prohibit use of the n-word at 6 the Tesla facility? 7 A Yes.</p>

7.	36:05-36:13	<p>5 Q Okay. And if you had known about someone</p> <p>6 using the n-word at the Tesla factory, that would</p> <p>7 certainly be something that you would investigate;</p> <p>8 correct?</p> <p>9 A Absolutely.</p> <p>10 Q And the reason that you would investigate that</p> <p>11 is use of the n-word at the Tesla factory could create a</p> <p>12 hostile work environment for other workers; right?</p> <p>13 A Correct.</p>
8.	37:04-37:06	<p>4 Do you recall ever investigating a claim where</p> <p>5 it was alleged that the n-word was used?</p> <p>6 A Not specifically.</p>
9.	39:02-39:08	<p>2 Q Was there ever any kind of meeting among HR</p> <p>3 professionals about, like, sensitivity training or how</p> <p>4 to address a situation where the n-word was being used</p> <p>5 in the workplace?</p> <p>6 A Specifically regarding the n-word?</p> <p>7 Q Yeah.</p> <p>8 A No.</p>
10.	38:05-38:15	<p>5 Q I see.</p> <p>6 It's fair to say that the HR team that did</p> <p>7 investigations would talk to each other about what was</p> <p>8 going on in the workplace; is that true?</p> <p>9 A As needed.</p> <p>10 Q And certainly if the n-word had been used in</p> <p>11 the workplace there, that would be a fairly big issue.</p> <p>12 Is that true, from an HR perspective?</p> <p>13 A Yes, it would be a big issue, but don't know</p> <p>14 that that would necessarily mean it would be discussed</p> <p>15 in a group. Investigations were need-to-know</p>
11.	42:21-43:05	<p>21 Q Okay. But under Tesla's guidelines or</p> <p>22 policies for anti-harassment complaints, if a member of</p> <p>23 the leadership team, supervisor, manager, director,</p> <p>24 received a complaint of harassment, they were to at</p> <p>25 least inform HR that they had received such a complaint;</p> <p>1 is that true?</p> <p>2 A Yes.</p> <p>3 Q And that was true throughout the time that you</p> <p>4 worked at Tesla; right?</p> <p>5 A Yes.</p>

12.	49:07-49:23	<p>7 Q In fact, every -- every employer has a duty to</p> <p>8 make sure that its workers are working in an environment</p> <p>9 that is harassment-free; right?</p> <p>10 10 A Correct.</p> <p>11 Q And that would include harassment based on sex</p> <p>12 or race or any of those other prohibited categories;</p> <p>13 right?</p> <p>14 14 A Yes.</p> <p>15 Q Similarly, every employer is -- has a duty to</p> <p>16 make sure that once it knows about harassment, that it</p> <p>17 takes some sort of corrective action to make sure that</p> <p>18 the harassment doesn't continue; right?</p> <p>19 19 A Yes.</p> <p>20 Q And in California, every employer must take</p> <p>21 all reasonable steps necessary to prevent discrimination</p> <p>22 and harassment from occurring; right?</p> <p>23 23 A Yes.</p>
13.	51:02-51:12	<p>2 Q You would agree that it's never okay to use</p> <p>3 the n-word in the workplace?</p> <p>4 4 A Correct.</p> <p>5 Q And you'd also agree that it's never okay to</p> <p>6 make offensive drawings that could be racial in nature;</p> <p>7 right?</p> <p>8 8 A Correct.</p> <p>9 Q You'd agree that every employer has a duty to</p> <p>10 provide a workplace where employees are not using the</p> <p>11 n-word towards other employees?</p> <p>12 12 A Yes.</p>
14.	51:23-52:10	<p>23 If -- if a Tesla worker complains about</p> <p>24 harassment to their supervisor, that meets their at</p> <p>25 least initial burden under Tesla's policies for</p> <p>1 reporting harassment; right?</p> <p>2 2 A Yes.</p> <p>3 Q And under Tesla policies, supervisors are</p> <p>4 supposed to report issues relating to harassment to</p> <p>5 their managers and to HR?</p> <p>6 6 A Yes.</p> <p>7 Q Similarly, if an employee wanted to report an</p> <p>8 issue of harassment to a manager, that would satisfy</p> <p>9 Tesla's reporting requirements; right?</p> <p>10 10 A Yes.</p>
15.	55:23-56:04	<p>23 Q And in terms of the standards, the</p> <p>24 anti-discrimination, anti-harassment policy standards</p> <p>25 that applied to workers at the Tesla factory, those</p> <p>1 standards applied to both regular full-time Tesla</p> <p>2 employees and to the temporary workers who were working</p> <p>3 at the plant; right?</p> <p>4 4 A Yes.</p>

16.	56:22-57:07	<p>22 Q A temporary worker would be doing a task that</p> <p>23 a Tesla employee might also do; is that true?</p> <p>24 A Yes.</p> <p>25 Q And a temporary worker could also -- would at</p> <p>1 -- there would be at least some</p> <p>2 reporting structure to a Tesla employee, is that right,</p> <p>3 for a temporary worker?</p> <p>4 A Correct</p> <p>5 Q And so even if they're --</p> <p>6 A And then a dotted line to their actual</p> <p>7 employer.</p>
17.	58:10-58:15	<p>10 Q Okay. And if someone does complain about what</p> <p>11 they consider to be inappropriate conduct, and they feel</p> <p>12 threatened, you would agree that as a Tesla HR person,</p> <p>13 you would still have a responsibility to make sure that</p> <p>14 nothing happened to them further; right?</p> <p>15 A Oh, absolutely</p>
18.	57:21-58:9	<p>21 but as far as -- like I wouldn't want to investigate for</p> <p>22 West Valley for their employee. I would be happy to</p> <p>23 facilitate.</p> <p>24 Does that make sense?</p> <p>25 Q So Tesla's HR role for a complaint by a</p> <p>1 temporary worker would be to facilitate the</p> <p>2 investigation. Is that true typically?</p> <p>3 A Primary first thing would be obviously,</p> <p>4 depending on what that is, are they comfortable or do</p> <p>5 they feel threatened. Those kind of things you want to</p> <p>6 take care of in the immediate.</p> <p>7 The next thing I would do is get them</p> <p>8 connected with the person that would have been my role</p> <p>9 for their employer.</p>
19.	58:16-59:5	<p>16 Q And as a Tesla HR person, if someone had</p> <p>17 complained about like threatening conduct or feeling</p> <p>18 that they were threatened, you would at least have to</p> <p>19 make that workplace safe for them from that point that</p> <p>20 you find out about it on; right?</p> <p>21 A In the immediate, absolutely. If then it</p> <p>22 was -- the investigation was conducted and it, say, only</p> <p>23 involved temporary people that were all under West</p> <p>24 Valley --</p> <p>25 Q Yeah.</p> <p>1 A -- if West Valley investigated it and came</p> <p>2 back and said there wasn't actually an issue, I'm going</p> <p>3 to believe that West Valley did their investigation</p> <p>4 thoroughly and if there was something to address,</p> <p>5 addressed it.</p>

1	20.	59:8-21	<p>8 You -- you typically rely on the contract --</p> <p>9 contracting agency to do an investigation into</p> <p>10 complaints by their employees; is that right?</p> <p>11 A If it is involving other of their employees.</p> <p>12 If it is involving Tesla employees, then I</p> <p>13 would talk to probably Tesla employees, they would talk</p> <p>14 to their employees.</p> <p>15 If the stars align and everyone was in the</p> <p>16 building or in the same side of the country and we would</p> <p>17 help -- sometimes I had been there when they were</p> <p>18 interviewing their employee and vice versa. But I</p> <p>19 wouldn't -- my preference would not be to interview</p> <p>20 someone else's employee, and especially not without them</p> <p>21 present.</p>
10	21.	59:22-60:10	<p>22 Q In terms of Tesla's duty, though, to all of</p> <p>23 its employees, it has a -- it has a duty to both its</p> <p>24 regular employees and the contractors to make sure that</p> <p>25 all of those people work in a work environment free from</p> <p>1 harassment or discrimination based on race; right?</p> <p>2 A Correct.</p> <p>3 Q And so if -- if Tesla HR became aware of a</p> <p>4 problem, let's say use of the n-word or use of racial</p> <p>5 drawings, Tesla would still have to make sure that that</p> <p>6 conduct stopped; right?</p> <p>7 A Assuming that an investigation found that that</p> <p>8 conduct did happen?</p> <p>9 Q Right.</p> <p>10 A Then yes.</p>
18	22.	61:10-61:14	<p>10 Q And if someone is complaining about conduct,</p> <p>11 do they have to complain in writing or can they also</p> <p>12 complain verbally about inappropriate conduct in the</p> <p>13 workplace at Tesla?</p> <p>14 A Either.</p>
21	23.	62:9-13	<p>9 Q And, similarly, if a person doesn't use</p> <p>10 "discrimination" or "harassment" in their complaint,</p> <p>11 they can still be complaining about what's</p> <p>12 discrimination or harassment; right?</p> <p>13 A Correct.</p>
24	24.	64:24-65:04	<p>24 Q Tesla had video cameras throughout the</p> <p>25 facility; is that true?</p> <p>1 A Correct.</p> <p>2 Q And if there was an altercation, would you</p> <p>3 like to see if there was video footage of the incident?</p> <p>4 A Absolutely.</p>

25.	67:08-67:13	<p>8 There were numerous situations where Tesla</p> <p>9 employees were supervising temporary workers who were</p> <p>10 employed by contractors; right?</p> <p>11 A Who were -- like a West Valley?</p> <p>12 Q Yeah.</p> <p>13 A Yes.</p>
26.	69:03-69:06	<p>3 Q Okay. But based on the contract that you knew</p> <p>4 about that Volt had with Tesla, it was understood that</p> <p>5 the Volt temporary workers would be subject to Tesla's</p> <p>6 policies for working at that facility; right?</p>
27.	69:10-69:11	<p>10 THE WITNESS: Yes, as well as their</p> <p>11 employer's</p>
28.	69:22-70:04	<p>22 Temporary workers who were working through a</p> <p>23 staffing agency at a Tesla facility had to follow the</p> <p>24 rules and regulations of the staffing agency and of</p> <p>25 Tesla?</p> <p>1 A Yes.</p> <p>2 Q And that was true throughout the time that you</p> <p>3 worked at Tesla; right?</p> <p>4 A Yes.</p>
29.	73:20-74:08	<p>20 Q Okay. Wayne Jackson was one of the nextSource</p> <p>21 representatives working at -- working for nextSource at</p> <p>22 the plant; is that right?</p> <p>23 A I am not completely sure. I don't recall ever</p> <p>24 meeting him face to face. NextSource wasn't set up the</p> <p>25 way that temporary workers were.</p> <p>1 Q NextSource was actually more of a conduit for</p> <p>2 other staffing agencies, wasn't it?</p> <p>3 A My understanding is they were brought on</p> <p>4 statement of work project or on a PO, but I don't</p> <p>5 have -- can't confirm that.</p> <p>6 Q Okay. Do you recall what the statement of</p> <p>7 work was about?</p> <p>8 A I do not.</p>

30. 80:21-
82:3

21 Q Okay. Tell me about that. What was the
22 situation in which you did some sensitivity training for
23 a group relative -- was it relative to the n-word or was
24 it --
25 A No.
1 t was the -- tell me about the
2 situation where you did sensitivity training for a
3 group.
4 A It was an offensive drawing that we were
5 unable to determine who did the drawing. And I say
6 "offensive"; it was a sexual drawing that clearly
7 offended folks.
8 That department was, I believe, over 500
9 people. So we brought everyone together each shift,
10 went over how that was not okay; if we ever could find
11 out who it was, it wouldn't be tolerated.
12 An investigation couldn't pinpoint who it was
13 because there wasn't a camera in that particular area,
14 we addressed the whole entire team, and then did
15 sensitivity training that covered pretty much
16 everything.
17 And even if I tell you a joke about the sky
18 being blue and you think it's funny today and you don't
19 tomorrow, then I can't tell you that joke anymore.
20 Q Do you remember what department it was in?
21 A I think it was stamping.
22 Q Okay. In terms of the drawing -- I don't mean
23 to offend you or anything, but can you describe the
24 sexual drawing that you ended up having to do
25 sensitivity training for.
1 A If I recall correctly, somebody put boobs on
2 like -- you know the male/female symbols on bathrooms?
3 Somebody drew boobs.

31.	84:17- 85:09	<p>17 That sensitivity training came out of the fact</p> <p>18 that there were these -- there was a visual harassment</p> <p>19 in this -- the boobs on the bathroom door.</p> <p>20 Is that what caused the training to come</p> <p>21 about?</p> <p>22 A Yes. Someone was offended by the boobs drawn.</p> <p>23 Q Okay. And how was the decision made as a</p> <p>24 result of that to do a sensitivity training? Why was</p> <p>25 that the outcome?</p> <p>1 make sure that everyone</p> <p>2 understood what the expectation was, and if it makes</p> <p>3 someone uncomfortable, it's not okay.</p> <p>4 Q Right. Okay.</p> <p>5 And do you recall any other sensitivity</p> <p>6 trainings that were done relative to either race or sex</p> <p>7 issues that you were involved in?</p> <p>8 A Not that I recall. I mean, other than your</p> <p>9 regular annual required of supervisor and above.</p>
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1	32.	85:21-87:04	<p>21 Q Okay. Now, I'm going to show you what has</p> <p>22 been previously marked as Exhibit 37. And just so the</p> <p>23 record is clear, Exhibit 37 is a three-page document</p> <p>24 Bates-stamped Tesla 35 through 37, and it's a complaint</p> <p>25 by Owen Diaz about a racist drawing, or what he</p> <p>1 considered to be a racist drawing.</p> <p>2 And I'm wondering if you recall seeing this</p> <p>3 email, or the picture that's attached.</p> <p>4 A I don't recall seeing the picture, and I don't</p> <p>5 specifically recall seeing it, given the time. It very</p> <p>6 well could have been something that I was -- "Here's a</p> <p>7 heads-up" kind of thing, and I just don't recall.</p> <p>8 Q Okay. Okay.</p> <p>9 Based on your -- you just read the complaint</p> <p>10 by Mr. Diaz from January 22nd, 2016. Based on that</p> <p>11 complaint and in your experience as a professional HR</p> <p>12 person, would that be sufficient to trigger an</p> <p>13 investigation, in your mind, his complaint along with</p> <p>14 the pictures?</p> <p>15 A Yes.</p> <p>16 Q And would -- as a trained investigator, given</p> <p>17 this written information and the confirming picture,</p> <p>18 would you expect there to be an investigation as a</p> <p>19 result of that?</p> <p>20 A Yes.</p> <p>21 Q If you were conducting the investigation,</p> <p>22 would you interview the people that are identified in</p> <p>23 Mr. Diaz's email?</p> <p>24 A Depending on if they were Tesla employees or</p> <p>25 employees of another company, either I would if they</p> <p>1 were Tesla employees, or I would ask that the primary</p> <p>2 employer, for lack of a better way to put it, did. And</p> <p>3 if it was a combination, work together if at all</p> <p>4 possible.</p>
22	33.	88:20-89:07	<p>20 So if Michael Wheeler and the Israel -- the</p> <p>21 guy whose name is Israel in this were both Tesla</p> <p>22 employees, those interviews you would expect would be</p> <p>23 done by Tesla HR, and then the interviews -- assuming</p> <p>24 that Ramon Martinez and Owen Diaz are temporary</p> <p>25 employees working through a staffing agency, you would</p> <p>1 interviewed by their</p> <p>2 respective contracting agencies; correct?</p> <p>3 A Correct.</p> <p>4 I have had occasion to that whoever was on</p> <p>5 site for, say, West Valley wasn't well versed or</p> <p>6 comfortable. So if that kind of situation came up, I</p> <p>7 would assist, but would make sure that they were there.</p>

1 2 3 4 5 6 7 8 9 10 11 12	34. 97:12-98:05	<p>12 Q If you look at Mr. Diaz's statement on Tesla</p> <p>13 22, which is the third page of Exhibit 128, and you look</p> <p>14 down at the bottom of what his statement is, he says</p> <p>15 that:</p> <p>16 "As a supervisor or leads, we are held to</p> <p>17 a higher standard because the people we</p> <p>18 supervise look to us as examples."</p> <p>19 Is that -- is that a true statement for people</p> <p>20 who were acting as leads or supervisors at Tesla, that</p> <p>21 they were examples for other employees?</p> <p>22 A Absolutely for Tesla employees.</p> <p>23 Q Okay. And if a supervisor --</p> <p>24 A I'm not aware of anybody that was working as a</p> <p>25 lead or a supervisor that wasn't a Tesla employee.</p> <p>1 Q Okay. But regardless, even if someone was a</p> <p>2 temporary worker through a staffing agency, if they were</p> <p>3 working in a lead position, they would need to adhere to</p> <p>4 Tesla policies; right?</p> <p>5 A I believe so.</p>
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	35. 99:22-100:20	<p>22 You understand that this drawing that's on the</p> <p>23 fourth page of Exhibit 128, that that drawing is a</p> <p>24 drawing that could be offensive to African Americans?</p> <p>25 A Yes.</p> <p>1 Q Right?</p> <p>2 A Yes.</p> <p>3 Q And it's a caricature that historically was</p> <p>4 used -- it's been called a "pickaninny." Have you heard</p> <p>5 that expression before?</p> <p>6 A Yes.</p> <p>7 Q And it was historically -- this drawing with</p> <p>8 the bone in the hair was historically a way to put down</p> <p>9 African Americans; right?</p> <p>10 A That's my understanding.</p> <p>11 Q So if you had understood that Mr. Martinez had</p> <p>12 admitted to putting this poster -- to putting this</p> <p>13 drawing up, and also to have threatened Mr. Diaz</p> <p>14 previously, you would expect that Mr. Martinez would be</p> <p>15 fired pursuant to Tesla policy, wouldn't you?</p> <p>16 A Assuming all of that is true --</p> <p>17 Q Yeah.</p> <p>18 A -- I wouldn't presume what nextSource does,</p> <p>19 but I would ask them not to have him return to an</p> <p>20 assignment at Tesla.</p>

36.	100:22-101:07	<p>22 Now, if you go on to Mr. Diaz's statement:</p> <p>23 ..."and because nothing has been done, it</p> <p>24 seems that his behavior is getting worse."</p> <p>25 That would be a concern to you as a Tesla</p> <p>1 it, if conduct is getting worse?</p> <p>2 A Absolutely.</p> <p>3 Q Where Mr. Diaz then says:</p> <p>4 "As an employee, I'm entitled to a safe</p> <p>5 and harassment-free work environment,"</p> <p>6 that's true; right?</p> <p>7 A Yes.</p>
37.	104:15-19	<p>15 Q Okay. Now, certainly if Ramon Martinez were</p> <p>16 yelling at him and threatening him, that would violate</p> <p>17 Tesla's policies; right? -- at least the threatening</p> <p>18 part?</p> <p>19 A Yes. Assuming it's Ramon Martinez.</p>
38.	107:23-108:02	<p>23 Q Okay. So in general, you had -- sometimes you</p> <p>24 had to push nextSource to get you the information you</p> <p>25 needed so that you could evaluate --</p> <p>1 A And go about things the way that we had asked</p> <p>2 them to go about them</p>

39.	108:4-109:12	<p>4 Exhibit 35 for the record is a three-page</p> <p>5 document Bates-stamped Tesla 140 to 142. And it appears</p> <p>6 that at least in this situation with respect to Ramon</p> <p>7 Martinez and Owen Diaz, that eventually at least it got</p> <p>8 forwarded to you.</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q And so at least at some point you did get 12 Mr. Diaz's statement about his</p> <p>13 -- the threat that he</p> <p>14 perceived from Ramon Martinez; correct? 15 A Owen's statement?</p> <p>16 Q Yeah.</p> <p>17 A Assuming this whole thread was actually</p> <p>18 forwarded at the time?</p> <p>19 Q Yeah.</p> <p>20 A Yes. If it was, I can't say for sure.</p> <p>21 Q Okay. But based on the email chain, I mean, 22 it looks like it was</p> <p>23 forwarded to you. Do you see that?</p> <p>24 A Correct.</p> <p>25 Q Okay.</p> <p>26 A Several days later; right? Yeah.</p> <p>27 Q Yeah.</p> <p>28 1 made on the 17th, and then</p> <p>2 forwarded again on the 20th to Wayne Jackson, and then</p> <p>3 it looks like Wayne Jackson forwarded it to you on that</p> <p>4 same day, on the 20th.</p> <p>5 A Terri.</p> <p>6 Q I'm sorry. Terri.</p> <p>7 A Yeah.</p> <p>8 Q Terri forwarded it to you that same day,</p> <p>9 October 20th of 2015; right?</p> <p>10 A Yes. And based on that, it would appear that 11 it was all nextSource</p> <p>12 employees involved, other than</p> <p>13 Victor and Ed.</p>
40.	109:13-19	<p>13 Q Okay. And it looks like maybe Ed was talking</p> <p>14 about getting involved here, and Terri Garrett was 15 asking for your help as</p> <p>16 to whether or not Mr. Romero 17 should be involved in the investigation; right?</p> <p>18 A It looks like she wants him not to be</p> <p>19 involved.</p> <p>20 Q Right.</p>
41.	116:22-25	<p>22 Q And the correct response to threatening 23 conduct is to remove that</p> <p>24 individual from the factory;</p> <p>25 right?</p> <p>26 A Correct.</p>

42.	119:23-120:04	23 Q Okay. But if an allegation of racist -- of a 24 racial term, particularly if it's the n-word, is 25 confirmed, that's the kind of information that 1 supervisors and managers such as Ed Romero and Victor 2 Quintero were trained to at least forward to HR; 3 correct? 4 A Yes.
43.	123:09-123:18	9 Q But any worker who is subject -- who is 10 working in the Tesla factory is subject to Tesla 11 policies; correct? 12 A Yes. 13 Q And -- and any worker who is being harassed or 14 discriminated against, regardless of who they work for, 15 if -- if the harassment or discrimination occurs in the 16 Tesla factory, Tesla has a responsibility to do 17 something about it if it knows about it; right? 18 A Yes.
44.	133:16-23	16 Q I do understand that. I'm wondering, 17 though -- we've looked at some documents which showed 18 numerous complaints about the n-word, several complaints 19 about the n-word, and I'm wondering if there was any 20 kind of discussion in human resources that there was a 21 need to address the use of that word in particular in 22 the workplace. 23 A Not that I recall.
45.	134:20-135:03	20 Q And if there had been such an investigation by 21 anybody at Tesla, there should have been at least some 22 kind of written record of that; right? 23 A Yes. 24 Q Because that's what Tesla policy requires is 25 documentation of any kind of investigation that's done; 1 right? 2 A Yes. Mine, for the most part, were 3 handwritten

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